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**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**

NOTIFICATION

Dated 19th December, 2014

Final Findings

Subject: Anti-dumping investigation concerning imports of USB Flash Drives, originating in or exported from China PR, Taiwan and Republic of Korea.

F.No.14/22/2012-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) thereof;

2. WHEREAS, M/s Storage Media Products Manufacturers & Marketers Welfare Association (hereinafter also referred to as “the Association” or “the applicant”) filed an application on behalf of the domestic producers represented by M/s Moser Baer India Limited (hereinafter also referred to as the domestic industry), before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and the Rules for initiation of anti-dumping investigations concerning imports of USB flash drives (hereinafter also referred to as the subject goods), originating in or exported from China PR, Taiwan and Korea, RP and requested for levy of anti-dumping duties on the imports of the subject goods, originating in or exported from the said countries.
3. AND WHEREAS, the Authority, on the basis of sufficient evidence submitted by the applicant, issued a public notice vide Notification No. 14/22/2012-DGAD dated 21st June, 2013, published in the Gazette of India, Extraordinary, initiating the subject investigations in accordance with the sub Rule 5(5) of the Rules, to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the said countries, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

A. PROCEDURE

4. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
 - i. The Authority notified the Embassies/Representatives of China PR, Taiwan and Korea, RP in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.
 - ii. In addition to the provisions of sub-rule (5) of Rule 5 supra, the Government of Korea RP was also informed through its Embassy in India about the receipt of the subject application as per provisions of Article 2.14 of Comprehensive Economic Partnership Agreement (CEPA) between India and Korea RP.
 - iii. The Embassies of China PR, Taiwan and Korea, RP in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the Rules with a request to advise the exporters/producers from their countries to respond to the questionnaire within prescribed time limit. A copy of the letter and questionnaire sent to the exporters was also sent to the concerned Embassies/Representatives along with the names and addresses of the known producers/exporters from their countries.
 - iv. The Authority sent a copy of the initiation notification dated 21st June, 2013 to the Embassies of China PR, Taiwan and Korea, RP in India, known producers/exporters from China PR, Taiwan and Korea, RP, known importers/users and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
 - v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of China PR, Taiwan and Korea RP in India in accordance with Rule 6(3) of the Rules supra.
 - vi. The Authority sent exporter's questionnaires to elicit relevant information to the following known producers/exporters in China PR, Taiwan and Korea, RP in accordance with Rule 6(4) of the Rules:
 - a. Transcend Information, Taiwan.
 - b. Kingmax Digital Inc., Taiwan.
 - c. ADATA Technology Co., Ltd., Taiwan
 - d. Hewlett-Packard Taiwan Ltd., Taiwan.

- e. Panasonic Taiwan Co., Ltd. (PTW), Taiwan
- f. Toshiba Information, Industrial and Power Systems Taiwan Corporation, Taiwan
- g. Samsung Electronics Taiwan Co., Ltd., Taiwan
- h. PNY Technologies, Inc., Taiwan.
- i. Kingston Technology Far East Co., Taiwan
- j. Verbatim Taiwan International Trading Corporate Ltd., Taiwan
- k. Apacer Technology Inc., Taiwan.
- l. KobianPte Ltd, Taiwan.
- m. Samsung C&T Taiwan Corporation, Taiwan.
- n. Toshiba China Co., Ltd, China
- o. SanDisk Corporation, China
- p. Kingston Technology Company, Inc., China
- q. Transcend Information, Inc., China
- r. ADATA Technology (Suzhou) Co., Ltd. China
- s. Apacer Electronic (Shanghai) Co., Ltd., China
- t. KobianPte Ltd, China.
- u. Panasonic Corporation of China, China
- v. Verbatim Shenzhen, China
- w. PNY Technologies, Inc., China
- x. SanDisk Semiconductor (Shanghai) Co. Ltd., China
- y. SanDisk Trading (Shanghai) Co., Ltd., China
- z. ShenzhenKaifa Micro Electronics Co. Ltd., China
- aa. Kingston Tech (Shanghai) Co Ltd, China
- bb. Sony (China) Co., Ltd, China

vii. The following companies filed exporters questionnaire response:

- a. SanDisk Semiconductor (Shanghai) Co Ltd, China PR, SanDisk Trading (Shanghai) Co Ltd, China PR, SanDisk Manufacturing, Ireland, and SanDisk International Ltd, Ireland.
- b. PNY Technologies Asia Pacific, Taiwan and PNY Technologies Inc, Shenzhen Representative Office, China.
- c. ATP Electronics, Taiwan, Inc, Taiwan.
- d. Sony Supply Chain Solutions, Japan, Sony EMCS Corp, Japan, Sony Corporation, Japan, Sony Electronics Asia Pacific PTE Ltd, Singapore.
- e. ADATA Technology (Suzhou) Co., Ltd, China PR and ADATA Technology Corporation Limited, Taiwan.

- f. Shenzhen Kaifa Micro Electronics Co Ltd, China (SKMEC), Kingston Technology Far East Corporation, Taiwan (KTFE),Kaifa Technology Hong Kong Ltd, Hong Kong and Kingston Digital International Ltd, Ireland (KDIL).
 - g. Transcend Information (Shanghai) Co Ltd, China PR, Transcend Trading (Shanghai) Co Ltd, China PR and Transcend Information Inc, Taiwan.
- viii. Another EQ response filed by Silicon Power Computer & Communications Inc, Taiwan was not accepted by the Authority at the application stage itself being incomplete. The said company did not file complete response.
- ix. The following EQR responses were filed at a much belated stage claiming themselves as manufacturing service providers to SanDisk Semiconductor (Shanghai) Co Ltd, China PR:
- a. UTAC Hong Kong Ltd, Hong Kong
 - b. UTAC Dongguan Ltd, China PR
 - c. STATS ChipPAC Shanghai Co Ltd, Shanghai, China PR
 - d. STATS ChipPAC (BVI), Ltd, British Verginia Island
 - e. Flextronics Marketing (L) Ltd, Lubuan, Malaysia
- x. The following Chinese producers/exporters filed Market Economy Treatment (MET) questionnaire response and claimed market economy status:
- i. SanDisk Semiconductor (Shanghai) Co Ltd, China PR.
 - ii. SanDisk Trading (Shanghai) Co Ltd, China PR.
 - iii. UTAC Dongguan Ltd, China PR.
 - iv. STATS ChipPAC Shanghai Co Ltd, Shanghai, China PR.
 - v. Shenzhen Kaifa Micro Electronics Co Ltd, China PR.
 - vi. Transcend Information (Shanghai) Co Ltd, China PR.
 - vii. Transcend Trading (Shanghai) Co Ltd, China PR.
- xi. The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
- a. Rashi Peripherals Pvt Ltd
 - b. Dynamic Overseas
 - c. Jas International
 - d. HanixOverseas
 - e. Aditya Enterprises
 - f. Veeline Media Ltd

- g. Himalayan Times Pvt Ltd
- h. Allied Electronics & Magnetics Ltd
- i. RanaPripherralsPvt Ltd
- j. Beetel Teletech Limited
- k. Supertron Electronics Ltd
- l. Intra-Tech Computers Pvt. Ltd.
- m. MediamanInfotech
- n. Luminous Technologies
- o. Redington (India) Limited
- p. CompuageInfocom Limited
- q. Neoteric Informatiqvt Ltd
- r. HCL Infosystems Ltd
- s. Fastrack Communications
- t. Shree Sagarmatha Distributors Pvt. Ltd
- u. KBC Computech (P) Ltd.
- v. Shreepati Computers
- w. Inter Foto India Pvt. Ltd
- x. Fortune Marketing Pvt. Ltd.
- y. Ingram Micro India Ltd
- z. Balaji Solutions Ltd

xii. Importer's questionnaire responses in the prescribed format were received from the following importer/user of the subject goods in India:

- a. Sony India Pvt. Ltd., New Delhi
- b. Compuage Infocom Ltd.
- c. Digi Life Distribution & Marketing Ltd.

xiii. The petitioner had relied upon import data as per CYBEX (Secondary Source) in the petition. The Authority had relied upon the said data provided by the petitioner prima facie for the purpose of initiation of present investigation. Post initiation, request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide transaction-wise details of imports of subject goods from China PR, Taiwan and Korea, RP for injury period, including the period of investigation. The Authority has analyzed the data from both the above stated sources and relied upon the data received from the DGCI&S in this finding as the volume and value of imports as per DGCI&S data is found to be higher than CYBEX.

xiv. The petitioner had submitted petition alleging dumping of the subject goods from China PR, Taiwan and Republic of Korea relying upon the imports data from the secondary source. The Authority had relied upon the said data provided by the petitioner prima facie and initiated the present

investigation. However, post initiation the transaction-wise imports data received from the DGCI&S was analyzed by the Authority vis-à-vis the data from secondary sources and it was noted that during POI the imports of the subject goods from Korea RP as per DGCI&S imports data was 0.053% of the total imports of the subject goods in to India and therefore de minimus. In view of the above position and in terms of the provisions laid down under Rule 14 of Anti-dumping Rules, the Authority terminates the investigation in respect of imports of subject goods from Korea RP and continues the investigation in respect of the imports of the subject goods, originating in or exported from China PR and Taiwan (hereinafter also referred to as the subject countries).

- xv. The Non-injurious Price based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xvi. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry.
- xvii. The submissions made by the interested parties during the course of the investigation and considered relevant by the Authority have been examined and addressed by the Authority in this finding.
- xviii. The period of investigation (POI) for the purpose of present investigation is 1st January 2012 to 31st December 2012 (12 months). The injury investigation period, however, covered the periods 2009-10, 2010-11, 2011-12 and the POI.
- 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 considered such interested parties as non-cooperative and recorded these findings on the basis of the facts available.
- xx. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-

confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules.

- xxi. In accordance with Rule 16 of the Rules Supra, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 5th December, 2014 and comments received thereon, considered relevant by the Authority, have been addressed in this finding.
- xxii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xxiii. ***in this finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxiv. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs53.69.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 5. The Product Under Consideration (PUC) in the present investigation, as defined by the Authority in the initiation notification, is "USB Flash Drives" and includes all its commercial/trade parlance names. As stated by the applicant, the product is also known in the market parlance by various other names such as pen drive, keychain drives, key drives, USB sticks, flash sticks, jump sticks, USB keys or memory keys. As stated by the applicant, these are also known by their proprietary names, such as Thumb Drive (Trek Technology), Jump Drive (Lexar), Data Traveler (Kingston), Cruzer Blade (SanDisk) or Jet Flash (Transcend). A USB flash drive is a data storage device which uses flash memory and USB (Universal Serial Bus) interface to interact with computers or other multimedia devices for data exchange.
- 6. USB flash drives are typically small, lightweight, hot-swappable and rewritable. They are hot-swappable in the sense that they may be plugged or removed without shutting down or causing significant interruption to the system. They are rewritable in the sense that they support overwriting of previously recorded data. The capacity of the flash memory depends on the capacity of the flash memory used. The subject goods are classified under Customs Classification Code 85235100. The import of the subject goods, as claimed by the applicant and reflected in the relied upon imports data, has also been reported under other tariff heads such as 84713090, 84717020, 84717030, 84717070, 84717060, 84717090, 84718000, 84719000,

84733030, 84733099, 85044030, 85049090, 85176290, 85177010, 85198940, 85198990, 85232910, 85234190, 85234990, 85235100, 85235220, 85235290, 85235990, 85238090, 85389000, 85423200, 85439000, 85258090. However, the customs classification is indicative only and in no way binding on the scope of this investigation.

SUBMISSIONS MADE BY PRODUCERS/EXPORTERS/IMPORTERS/OTHER OPPOSITE INTERESTED PARTIES

7. The submissions made by the producers/exporters/importers/other opposite interested parties regarding product under consideration and like article during the course of the investigation and considered relevant by the Authority are as follows:

- i. The scope of the PUC is too wide and not defined by the Authority properly.
- ii. UFDs that are presently sold by the domestic industry are only USB 2.0 and 1.1 compliant. The petitioner does not manufacture UFDs supporting USB 3.0 specification. UFDs that are USB 2.0 and 1.1 compliant are not compatible with USB 3.0 ports. There is significant cost and price difference between UFDs that are USB 2.0 compliant and USB 3.0 compliant. UFDs supporting USB 3.0 ports are nearly 10 times faster than those supporting USB 2.0 ports. UFDs with USB 3.0 specifications have higher power saving capabilities. Therefore, the scope of the PUC must exclude UFDs Supporting USB 3.0 ports.
- iii. As the domestic industry does not manufacture UFDs having a storage capacity of 64 GB or more, the same should be excluded from the scope of the PUC.
- iv. USBs with differentiated features such as the SanDisk Dual Drive and the SanDisk Connect Wireless Flash Drive, which are not manufactured by the domestic industry, should also be excluded from the purview of the PUC.
- v. Circuits/Chip on Board (COB) is merely intermediate products, which in themselves are not exported to India by any of the identified exporters. Therefore, the subsequent inclusion of the volume of COB by the petitioner is without any legal basis.
- vi. If the Authority were to accept the Petitioner's request for the inclusion of COB into the PUC for the present investigation, then MBIL (which has been identified as being the sole member of the domestic industry) should not be considered to be a part of the domestic industry on

account of it admittedly importing COB and the present investigation should be terminated.

- vii. The import statistics provided by the domestic industry was revised and later withdrawn based on their own understanding of product under consideration which includes chip on board. Domestic industry has not clarified anything in relation to chip on board and its characteristics which would qualify it as a product under consideration. The Domestic Industry has not disclosed what methodology it adopted to segregate the imports of COB from the total import statistics which was originally before the authority. Moreover, the exact nature of how the Domestic Industry uses COB is not known.
- viii. UFDs of different capacities cater to different consumers based on their uses. UFDs of higher storage capacities differ significantly from UFDs of smaller capacities based on the raw material used, costs, prices, function and uses. In view of these reasons, product type of higher capacity not manufactured by the petitioner cannot be considered as 'like article' and should be excluded from the PUC.

Submissions made by the Domestic industry

- 8. The submissions made by the domestic industry, regarding product under consideration and like articles, during the course of the investigation and considered relevant by the Authority are as follows:
 - i. The product under consideration is a data storage device which uses flash memory and USB (Universal Serial Bus) interface (Interface device is a semiconductor device IC, normally called as USB controller) to interact with computers or other multimedia devices for data exchange (hereinafter referred to as USB flash drive or product under consideration). USB flash drives are popularly known as pen drives. In market, they are also available as keychain drives, key drives, USB sticks, flash sticks, jump sticks, USB keys or memory keys. They are also known by their proprietary names, such as Thumb Drive (Trek Technology), Jump Drive (Lexar), Data Traveler (Kingston), Cruzer Blade (SanDisk) or Jet Flash (Transcend).
 - ii. USB flash drives are typically small, lightweight, hot-swappable and rewritable. It is hot-swappable in the sense that it may be plugged or removed without shutting down or without causing significant interruption to the system. It is rewritable in the sense that it supports overwriting of previously recorded data. The capacity of the USB flash drive depends on the capacity of the flash memory used. USB flash drives currently on the market ranges from below 256MB to above

256GB/128GB (2GB to 64GB capacity are available in market for common usage, 128GB and 256GB is recently introduced and very expensive as compared to the 120GB Hard disk. USB pen drive of Capacity below 1GB like 500MB, 256MB, 128MB, are used at times for free gifting/free distribution along with magazine/ promotional/ advertisement purpose in college etc.

- iii. Imports of the subject goods are also being reported under the following customs heads - 84713090, 84717020, 84717030, 84717070, 84717060, 84717090, 84718000, 84719000, 84733030, 84733099, 85044030, 85049090, 85176290, 85177010, 85198940, 85198990, 85198990, 85232910, 8523419 0, 85234990, 85235100, 85235220, 85235290, 85235990, 85238090, 85389000, 85423200, 85439000. However customs classification is indicative only and not binding on the scope of the investigation. Authority should address this while making the dumping and injury analysis.
- iv. The definition of the product under consideration is appropriate. Development of a new product type is an on-going process. Merely because the capacity of USB Flash Drives is being continuously altered, the resultant product does not become a different product. The USB Flash Drives ranging from 16 MB to 256 GB have essentially the same product characteristics and are like articles. The range produced by Moser Baer or foreign producers in terms of capacity is fluid and not fixed. For this reason, the scope of the product under consideration should not be limited on the basis of storage capacity.
- v. The domestic industry has already produced and supplied flash drives of 64 GB and has the capacity to manufacture PUC of more than 64 GB.
- vi. Flash drives of 2.0 and 3.0 ports are admittedly flash drives only. Since both are flash drives, the scope of the product under consideration rightly includes flash drives of 3.0 ports as well. Both the types of flash drives can be interchangeably used in computer systems having 2.0 or 3.0 compatible mother boards. The domestic industry has already produced flash drives of 3.0 compatible port. Moser Baer has all necessary and required setup/machinery/tools/equipment to manufacture the USB pen drive of 2.0 and 3.0 ports
- vii. Whereas the sales price of 3.0 port flash drive should be significantly higher than the sales price of 2.0 port flash drive, in the present case import price of 3.0 port flash drive is sometimes lower than the import price of 2.0 port flash drive. The exporters have targeted such low price

for 3.0 port drives only to dissuade the domestic industry from commercially producing and selling the product.

- viii. The share of imports of 3.0 port flash drives during the POI is insignificant (0.65%) as compared to the total import of the product under consideration. The share of imports of 128 and 256 GB is also insignificant. The domestic industry has already produced flash drive of 128 GB, 256 GB and 3.0 compatible port, it has not offered the same in commercial volumes in the market only because of lack of adequate demand and absurdly low price at which the goods are being imported due to dumping from the subject countries.
- ix. To the end consumers, USB 3.0 and USB 2.0 port is the function of speed and price only. In case they can get high speed drive of USB 3.0 port at lower prices, then they will switch over.
- x. USB 3.0 port can be connected to 2.0 port and vice versa. Only speed will be different if USB 3.0 is connected to 2.0 port. Only 2 parts are different between USB 3.0 and USB 2.0 port i.e. USB Connector and USB Controller. The only difference between 2.0 and 3.0 flash drive is in speed. However, firstly, the difference in speed is insignificant for a normal consumer. Secondly, if 3.0 drive is used on a computer having 2.0 port, its speed would be the same as the speed obtained using 2.0 flash drive. However, such differences cannot render the two products different.
- xi. There is no known difference in the subject goods produced by the Indian industry and exported from subject countries. Subject goods produced by the domestic industry and imported from the subject countries are comparable in terms of physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.
- xii. Unlike NAND based flash drive, Chip on Board (COB) based flash drive is another kind of flash drive. COB based flash drives are being imported in to India and are being produced and supplied by domestic industry as well. Since the product is being imported as also being supplied by domestic industry, COB based flash drive is rightly included as a flash drive.
- xiii. Main components of a flash drive are:
 - a) Controller: A component which provides an interface for communication between the host device and flash memory. The

controller contains a RISC (Reduced Instruction Set Computer) microprocessor, and some ROM (Read-Only Memory) and RAM (Random Access Memory).

- b) NAND Flash: A device used to store data, in the form of Non volatile Memory which allows for repeated erasure and writing operations.
 - c) Substrate or Printed Circuit Board (PCB): A support for electronic components which is used to connect the circuits of on-board electronic components.
 - d) Resistor: An electronic component used to control the ratio of electrical voltage and current in a circuit.
 - e) Capacitor: An electronic component consisting of a dielectric layer between two metal plates which is capable of storing electrical energy in the electric field between two conductors.
 - f) Crystal oscillator: An electronic component which supplies the timing signals necessary for the operation of the device and control of data output.
 - g) Plug: In case of PCB based flash drive, an interface which provides connectivity to computer and other multimedia devices.
 - h) Housing: The covering of a USB flash drive is usually made of plastic, metal or rubber material. The covering is electrically insulating and protective.
 - i) Accessories and Packing: External packaging, product manual or driver CD, etc. of a USB flash drive may be included.
- xiv. Whereas the cost on account of COB in the POI was, on average basis, Rs *** per piece, full cost of production was Rs. *** per piece. Thus, value addition by the company is Rs. *** per piece. Therefore, imports of COB, which is a component, should not be considered as import of the product under consideration.
- xv. A number of interested parties have contended that that domestic industry is not producing flash drive of 64GB and above. It has also been contended that flash drive with 3.0 ports are not produced by the domestic industry. Petitioner submits as follows in this regard:
- a. Flash drives of 2.0 ports and 3.0 ports are admittedly flash drives only. Since both are flash drives, the scope of the product under consideration rightly includes flash drive 3.0. Both flash drives of 2.0 and 3.0 can be interchangeably used in computer systems having 2.0 or 3.0 compatible mother boards. In particular, a computer system with 2.0 mother

board can use flash drive of 2.0 and 3.0. Similarly, computer system of 3.0 mother board can use flash drive of 2.0 and 3.0. The submission made by interested party stating the systems/ports are different is highly misleading and factually incorrect.

- b. The domestic industry has already produced and supplied Flash Drive of 64 GB. Domestic industry has capacity and capability to manufacture more than 64GB and has already produced flash drive of 128 GB, 256 GB and 3.0 compatible ports. These have not been offered for commercial sale in the market only because of commercial considerations. Whereas the sales price of 3.0 flash drive should be significantly higher than price of 2.0 flash drive, in the present case, import price of 3.0 is sometime even lower than the import price of 2.0 drive. In fact, in a number of cases of imports, import price of known imports of 3.0 is lower than import price of 2.0 port in case of 16 GB drive (which commands significant volume of imports of 3.0). The exporters have targeted such low price for 3.0 drives only to dissuade the domestic industry from commercially producing & selling the product.
- c. The share of imports of 3.0 port flash drives during the POI is a meager 0.65%. The share of imports of 128 and 256 GB flash drives during the POI is a meager 0.12% and 0.00% respectively.
- d. Moser Baer has all necessary and required setup/ machinery/ tools/ equipments to manufacture the USB pen drive of 2.0 and 3.0. In fact, Moser Baer has already manufactured USB 3.0. Moser Baer started the USB 3.0 design in July 2012 and worked with TW company M/s ETRON. Moser Baer also made design with company from TW, M/s Innostor. Moser Baer have developed PCB, and made few units of USB 3.0 in different capacity i.e 8/16/32/64/128GB. However, the company has not commenced commercial production and sale only because of commercial consideration. The price at which USB 3.0 ports is being sold in the market is materially lower than the price at which USB 2.0 ports is being imported in India and the additional costs involved in producing & selling USB 3.0 ports.

- e. To make the Pen drives of USB 3.0, there is no change in plant, machinery & setup. All machines & setup are back to back compatible for USB 2.0 and USB 3.0.
 - f. To the end consumers, USB 3.0 and USB 2.0 is the function of speed and prices only. In case they can get high speed drive of USB 3.0 at lower prices, they will switch.
 - g. USB 2.0 pen drive can be connected to USB 3.0 port and USB 3.0 pen drive can be connected to the USB 2.0 port. Only speed will be different, if USB 3.0 pen drive is connected to USB 2.0 port. Flash drive sold by the domestic industry is compatible with USB 3.0 ports. A 3.0 device can be plugged into a 2.0 port and a 2.0 device can be plugged into a 3.0 port. Only speed differs. USB 2.0 and USB 3.0 products are same/ similar. The design & development process of USB 3.0 Flash drive, production process, testing process is same in comparison to USB 2.0 Flash drive. Only 2 parts are different between USB 2.0 and USB 3.0 (1) USB connector (this is metal shell connector and is a bought out item for every producer of flash drive (2) USB controller. However, difference in connector or controller cannot render the two product types as different products.
- xvi. In a situation where the domestic industry is not producing and selling an identical product type, the rule addresses the situation. The rule provides the Designated Authority to examine whether there is a product produced and sold by the domestic industry which has characteristics closely resembling with the imported product. Petitioner submits that the only difference between 2.0 and 3.0 flash drive is in speed. However, firstly, the difference in speed is insignificant for a normal consumer. Secondly, if 3.0 drive is used on a computer having 2.0 port, its speed would be the same as the speed obtained using 2.0 flash drive. USB 3.0 devices having higher speeds and higher power saving capabilities do not make them non-interchangeable. The domestic industry is clearly producing substitute to what is being imported into the country

Examination of the Authority

9. The Authority notes that the product under consideration (PUC) in the present investigation is USB flash drives and includes all its commercial/trade parlance names. As stated by the applicant, the product is also known in the market parlance by various other names such as pendrive, keychain drives,

key drives, USB sticks, flash sticks, jump sticks, USB keys or memory keys. These are also known by their proprietary names, such as Thumb Drive (Trek Technology), Jump Drive (Lexar), Data Traveler (Kingston), Cruzer Blade (SanDisk) or Jet Flash (Transcend). A USB flash drive is a data storage device which uses flash memory and USB (Universal Serial Bus) interface to interact with computers or other multimedia devices for data exchange. USB flash drives are typically small, lightweight, hot-swappable and rewritable. They are hot-swappable in the sense that they may be plugged or removed without shutting down or causing significant interruption to the system. They are rewritable in the sense that they support overwriting of previously recorded data. The capacity of the flash memory used depends on the capacity of the flash memory used. The subject goods are classified under Customs Classification Code 85235100. As claimed by petitioner and reflected in the imports data relied upon by the Authority, the import of the subject goods are also reported under other tariff classifications viz; The import of the subject goods, as claimed by the applicant and reflected in the relied upon imports data, has also been reported under other tariff heads such as 84713090, 84717020, 84717030, 84717070, 84717060, 84717090, 84718000, 84719000, 84733030, 84733099, 85044030, 85049090, 85176290, 85177010, 85198940, 85198990, 85232910, 85234190, 85234990, 85235100, 85235220, 85235290, 85235990, 85238090, 85389000, 85423200, 85439000, 85258090. However customs classification is indicative only and not binding on the scope of the investigation.

10. With regard to like article, Rule 2(d) of the Anti-dumping Rules 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;

11. The Authority notes that there is no known difference in product under consideration produced by the domestic industry and exported from subject countries. Product under consideration produced by the domestic industry and imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

12. The various submissions made by the interested parties with regard to the scope of PUC and domestic like article and considered relevant by the Authority are examined and addressed as follows;

- i. As regards the contention that the scope of the PUC defined in the present investigation is too wide and not appropriate, the Authority notes that the PUC in the present investigation i.e. USB Flash drives has been defined comprehensively and appropriately keeping in mind the technicality and functionality of the product. A USB flash drive is a data storage device that includes flash memory with an integrated Universal Serial Bus (USB) interface. USB flash drives are typically removable and rewritable data storage devices with different capacities. A USB flash drive consists of a small printed circuit board carrying circuit element and a USB connector insulated electrically and protected inside a plastic, metal, or rubberized case. USB connector may be protected by removable cap or retracted in to the body of the drive. USB flash drives come in various shapes, colour, sizes, capacities and even material.
- ii. As regards the contention that the applicant has included all types of UFDs within the scope of the PUC, irrespective of the fact whether these types are being produced by the domestic industry or not and the differences in features such data retention capacity, erase cycle, read/write speed, weight etc, the Authority notes that the basic function of USB flash drive is data storage. Development of style, design, size and capacity of USB flash memory is an on-going process, depending upon the demand in the market. Accordingly the associated cost and price do also differ within a reasonable range. However, the differences in style, design, size, capacity etc. and the associated cost and price difference do not make the resultant products different. The USB Flash Drives ranging from 16 MB to 256 GB have essentially the same product characteristics and similar functional usage. Therefore, the USB flash drives of all styles and sizes/capacities are technically and commercially substitutable in the market.
- iii. As regards the contention that USB flash drives that are 2.0 and 1.1 compliant are not compatible with USB 3.0 ports, the Authority notes that the compatibility lies with the computer system and not the USB. The USBs that are 1.1, 2.0 and 3.0 compliant can function on the same computer system, but may not give the desired speed and efficiency. As informed by the domestic industry, they have the capacity to manufacture the 3.0 port USB, depending upon the demand in the market. The import of 3.0 port USB is minimal during the POI as the demand for the same is yet to pick up in the Indian market. The imports of 3.0 port USB flash drives constituted only 0.37% of the total imports of the subject goods during the POI.

- iv. The opposite interested parties claimed that there is significant difference in cost of both the varieties of USB. But, as reported by domestic industry, often the price of 3.0 port USB in Indian market is lower than the other varieties. The landed price of imports shows that the consumers were getting the material at comparable prices indicating direct competition between 2.0 and 3.0 products. Commercial substitutability is also visible between 2.0 and 3.0 products as the price difference between 2.0 and 3.0 products is not significant. On the basis of relied upon imports data, the Authority notes that during the POI the import price of USB Flash Drives of 3.0 port and 2.0 port per piece is US\$ *** and US\$ *** respectively. Nonetheless, in a situation of dumping, the cost and price does not matter much. What matters is whether both the varieties of USBs are technically and functionally substitutable and whether one is capable of replacing the other in the market. If yes, then imposition of anti-dumping measures on the imports of one variety does not give the desired result since the other one being kept out of the purview of the anti-dumping measures can flood the market to the detriment of the domestic industry.
- v. As regards the contention that UFDs supporting USB 3.0 ports have higher power saving capabilities and offer higher transfer speeds than those supporting USB 2.0 ports and therefore falls beyond the scope of the PUC, the Authority notes that power efficiency and functional speed may make USB 3.0 ports more efficient than UFDs supporting USB 2.0.ports, but do not make them different.
- vi. It is a well-settled jurisprudence that quality and efficiency are not relevant for defining the scope of the Product under Consideration in an anti-dumping investigation. Since the products of both are ultimately used for data traveler, the consumers perceive 2.0 and 3.0 products as one single product. Therefore, it is a common man's knowledge that 2.0 and 3.0 products are directly competing with each other in the market and are therefore functionally substitutable. Moreover, the price difference between 2.0 port and 3.0 port flash drives is not significant enough to deter the consumers to opt for 3.0 port flash drive in the event of exclusion of the same from the purview of the anti-dumping measures. Further, speed per se in data/file transfer does not render any restraints on the end user.
- vii. The Authority notes that USB 3.0 is compatible with USB 2.0 and 1.1. USB 3.0 flash drive can be plugged into a USB 2.0 port, but the transfer speeds will be limited by 2.0 specifications. Thus, UFDs supporting USB 2.0 ports and USB 3.0 ports are like articles and,

therefore, the scope of the PUC need not exclude UFDs supporting USB 3.0 ports.

- viii. As regards the contention that the domestic industry does not manufacture UFDs having a storage capacity of 64 GB or more and, therefore, UFDs having a storage capacity of 64 GB or more must be excluded from the scope of the PUC, the Authority notes that difference in data storage capacities does not make the USBs different.
- ix. As regards the contention that Authority should not impose duties on products not manufactured by the Domestic Industry such as 64 GB, 128 GB and 256 GB USB Flash Drives, flash drives that meet the 3.0 USB specification and USBs with differentiated features such as the SanDisk Dual Drive and the SanDisk Connect Wireless Flash Drive, the Authority notes that all these varieties are technically and commercially substitutable in the sense of being flash drives and as per the Anti-dumping Rules it is not obligatory on the part of the domestic industry to manufacture all the substitutable varieties of a PUC.
- x. As regards the contention that Circuits/Chip on board (COB) are merely intermediate products, which in themselves are not exported to India by any of the identified exporters and therefore, the subsequent inclusion of the volume of COB by the petitioner is without any legal basis, the Authority notes that the import data relied upon in the present investigation reported imports of COB based flash drives from the subject countries during the POI. The Authority further notes that COB or Chip on Board based flash drives for short is a type of flash memory that looks very similar to other types of flash drives. What makes COB based flash drives different than a traditional flash drive for example is that instead of having the controller chip and flash memory chip separate, on a COB based flash drive both the controller and the flash memory are built together.
- ix. As regards the contention that if COB is considered as a part of the PUC, Mosar Baer should not be considered to be a part of the domestic industry on account of it admittedly importing COB, the Authority notes the clarification given by Mosar Baer that they have imported the components for manufacturing of COB flash drives. Therefore, the imports of components by Mosar Baer do not affect the standing of the company as domestic industry under the Rules.
- x. As regards the contention that the import statistics provided by the domestic industry was revised and later withdrawn, the Authority notes that although for the initiation of the investigation the imports data

provided by the petitioner from the secondary source was relied upon prima facie, the imports data received from the DGCI&S source has been relied upon in the present findings. Therefore, the changes import statistics provided by the domestic industry has no impact on the present findings.

- xi. As regards the contention that the domestic industry has not disclosed what methodology it adopted to segregate the imports of COB from the total import statistics which was originally before the authority, the Authority notes that the USB flash drive and COB flash drives are technically and commercially substitutable and therefore like article. The COB that is pre-assembled is as such described in the database relied upon by the Authority.
- xii. As regards the contention that the exact nature of how the domestic industry uses COB is not known, the Authority notes that the domestic industry has clarified in their submissions that they have imported components for manufacturing of COB flash drives and not fully built or ready to use COB in COB substrate based flash drives.
- xi. As regards the contention that it is not clear whether COB is an input used in the manufacturing of a flash drive or is it merely a stage in the production process, on the basis of clarification given by the domestic industry, the Authority notes that COB is a component which has been imported by the domestic industry for manufacturing COB based flash drives.
- xiii. As regards the contention that UFDs of different capacities cater to different consumers based on their uses and therefore they are different from each other, the Authority notes that UFDs are basically data saving devices differentiated by their style, design, size, capacity etc. Such differences do not make them different from each other as they are technically and commercially substitutable and functionally alike.
- xiv. As regards the contention that the UFDs of different storage capacities differ with regard to the raw material i.e. NAND used, the Authority notes that NAND determines the capacity of memory of the UFDs, but do not make them different from each other as they are technically and commercially substitutable and functionally alike.
- xv. As regards the contention that costs and prices of the product under consideration vary significantly with changes in storage capacity and therefore they cannot be considered as alike, the Authority notes that

the cost and price difference between capacity to capacity USBs is reasonable. Considering the functional substitutability, keeping aside some capacity USBs out of the purview of anti-dumping measures would encourage the exporters to dump the same and replace the domestic industry's products in the market.

- xvi. As regards the contention that a consumer requiring a UFD of 128 GB for large data storage will not opt for UFDs of storage capacity 32 GB, the Authority notes that nothing prevents the consumer to store the required data in more than one UFD.
 - a. As regards the contention that UFDs of higher storage capacities differ significantly from UFDs of smaller capacities based on the raw material used, costs, prices, function and uses, the Authority notes that considering the functional substitutability of the products, keeping certain categories of UFDs out of the purview of anti-dumping measures would enable continued dumping of the same and replace the domestic industry's products in the market.
 - b. As regards the contention that product type of higher capacity not manufactured by the domestic industry cannot be considered as 'like article' and should be excluded from the PUC the Authority notes different varieties of the PUC are technically, commercially and functionally substitutable and it is not mandatory on the part of the domestic industry to manufacture all the substitutable varieties of the PUC. The Authority further notes that the evidence available on record shows that domestic industry is manufacturing 2.0 up 64 GB and supplied in the market. Further domestic industry has capacity and capability to manufacture more than 64GB and supply the same as and when demand increased. Domestic industry is not manufacturing more than 64GB just because of negligible demand of higher GB in the relevant period.
13. In view of the above position, the Authority notes that USB flash drives of all styles and sizes/capacities are technically and commercially substitutable in the market. The Authority further notes that USB flash drives of 2.0 and 3.0 ports are also technically and commercially substitutable in the market. The Authority further notes that USB flash drives and COB based flash drives are also technically and commercially substitutable. In view of this position, the authority notes that none of the types/varieties of flash drives, submitted for exclusion by the opposite interested parties, can be excluded from the purview of the product under consideration.

14. The Authority further notes that USB flash drives produced by domestic industry and imported from the subject countries are technically and commercially substitutable and are like article within the meaning and scope of Rule 2(d) of the Anti-dumping Rules.

C. SCOPE OF DOMESTIC INDUSTRY & STANDING

Submissions made by Exporters, Importers, Users and other Interested Parties

15. The submissions made by the producers/exporters/importers/other interested parties during the course of the investigation with regard to scope of domestic industry & standing and considered relevant by the Authority are as follows:

- i. Amkette and Om Nanotech Private Limited are also domestic producers of the subject goods. The existence of additional domestic producers casts a doubt over whether the Applicant fulfills the requirement of “domestic industry” within the meaning of WTO ADA and AD Rules. The Authority must determine whether MBIL’s output of the like article constitutes a major proportion of the total domestic production. The injury related data submitted by the applicant cannot be relied upon as it does not refer to other domestic producers of the subject goods.
- ii. The domestic industry has not clarified its standing as a manufacturer and whether it performs all these activities for manufacturing the product under consideration. Moser Baer does not form part of the domestic industry because it imports major constituents of the PUC.
- iii. MBIL should not be considered as part of domestic industry on account of admitting importing COB.
- iv. Moser Baer has not disclosed the winding up proceedings pending before the Delhi High Court against them. In view of this, the Authority should refrain from continuing with the anti-dumping investigations.

Submissions made by the Domestic industry

16. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing and considered relevant by the Authority are as follows:

- i. The petition was filed by Storage Media Products Manufacturers & Marketers Welfare Association on behalf of domestic producer represented by Moser Baer India Limited.

- ii. Moser Baer India Limited is the sole producer of the product under consideration in India. There is no other company in India known to be producer of the subject goods in India. Moser Baer does not import the subject goods. It is not related to any of the exporters or importers of the dumped goods. Therefore, Moser Baer India Limited constitutes domestic industry for the purpose of the present investigation.
- iii. Om Nano Tech” and “Amkette” are not undertaking complete production process of the subject goods and, therefore, cannot be treated as domestic producers..
- iv. Imports of raw materials, parts, components, inputs, consumables or capital goods are different from imports of product under consideration. Merely because domestic industry has imported raw materials, parts, components, inputs, consumables or capital goods, the company does not become importer of the product under consideration. NAND Flash is only a component and therefore import of NAND Flash does not disentitle the petitioner from filing the present petition.
- v. As regards stage-wise manufacturing process, since imports of parts or component is entirely irrelevant under the law, the argument that petitioner has by design not submitted stage-wise manufacturing process is irrelevant. Since Moser Baer clearly constitutes ‘the domestic producers as a whole engaged in the manufacture of the like article’, it constitutes the domestic industry in the present investigation. It is a member of the Association which had sufficient standing to file the petition.
- vi. Petitioner has described two types of flash drives as PCB based flash drives (for normal flash) and COB substrate based flash drives (COB based pen drive). Petitioner has not imported fully built or ready to use Chip on Board (COB) in COB substrate based flash drives. Petitioner has procured components for production of COB substrate based flash drives and produced and sold COB substrate based flash drives in the market. Petitioner has imported preassembled micro universal flash drive (UFD). Preassembled micro universal flash drive (UFD) is a component and not a flash drive. Petitioner has produced COB substrate based flash drives from the intermediate stage only because of commercial reasons. Had the petitioner carried out complete production process, its cost of production would have been still higher and the petitioner would have suffered higher losses. Import of unfinished product under

consideration does not disentitle the petitioner being domestic industry.

- vii. Without prejudice, if Authority considers unfinished COB imported by the petitioner as also product under consideration, even then the petitioner should be considered as eligible domestic industry in the facts and circumstances of the case and discretion available with the Authority.
- viii. The volume of imports of unfinished COB by the petitioner vis -a - vis the total imports of product under consideration in to India during the POI from the subject countries is extremely low (about ***%).
- ix. Domestic industry has not imported COB from the subject countries during the POI, but imported components of COB to manufacture and supply COB flash drives in the market.
- x. Petitioner has imported components for production of Chip on Board (COB) substrate based flash drive and preassembled micro universal flash drive (UFD) and not the fully built or ready to use flash drives as such.
- xi. A flash drive is made of following material/ components:
 - a. USB controller DIE,
 - b. Flash DIE,
 - c. Resistor,
 - d. Capacitor,
 - e. PCB substrate,
 - f. Gold wire,
 - g. Epoxy,
 - h. Solder paste etc.
 - i. Printing
 - j. laser marking
 - k. casing
 - l. testing
 - m. assembly/packaging
 - n. blister packing
 - o. labeling and marking
 - p. formatting,
 - q. configuration software,
 - r. laser marking,
 - s. pasting.
- xii. Process (a) to (h) has already been carried out on preassembled micro universal flash drive (UFD) imported by the petitioner in case

of COB based flash drive sold by the petitioner. Process (i) to (s) has been carried out by the petitioner. Process (a) to (s) is being carried out by the petitioner in case of PCB based flash drive (for normal flash). It is not a case that the petitioner is incapable of carrying out process (a) to (h) in case of COB substrate based flash drive. Petitioner has produced these drives from intermediate stage only because of commercial reasons. Had the petitioner carried out (a) to (h) in case of COB substrate based flash drive, its cost of production would have been still higher and the petitioner would have suffered higher losses.

- xiii. Petitioner imports preassembled micro universal flash drive (UFD) as component and conducted value addition over the same, as the USB slot inside PC/laptop is of 2.3mm. The component imported by the petitioner has thickness of 1.6mm and therefore it would not be commercially useable unless it has a thickness of 2.3mm. Hence for proper fitment the COB has to place on/inside plastic/metal housing in order to enhance its thickness to 2.3mm. After the fitment in housing/casing Unit is called as COB based Pen drive/USB. This is then tested, formatted, SW is installed, laser marking, pasting, print & packaged. As such, without these value additions a fully built COB will not be usable. It is relevant to note that Moser Baer has capability to manufacture a COB in house from scratch.
- xiv. Petitioner reiterate that preassembled micro universal flash drive (UFD) is not product under consideration and is a component required for producing the product under consideration. The only difference between PCB based flash drive (for normal flash) and COB substrate based flash drive (COB based pen drive) produced by the petitioner is in the stage of production processes carried out by the petitioner. Imports of unfinished product under consideration do not disentitle the petitioner being domestic industry.
- xv. Without prejudice, if Designated Authority considers unfinished COB imported by the petitioner as also product under consideration, even then petitioner should be considered as eligible domestic industry in the facts and circumstances of the case and discretion available to the Designated Authority since the volume of imports made by the petitioner is extremely low considering production by the petitioner, imports of the product under consideration from subject countries, production and consumption in India.
- xvi. Production of product under consideration involves a large number of activities. Some of the essential activities are listed below.

- a) Conceptualizing the product and a model
- b) Designing the product
- c) Designing the PCB
- d) Undertaking full production activities using PCB. The activities involved in this are
 - i. Paste printing
 - ii. Pick & place
 - iii. Solder reflow
 - iv. Laser marking
 - v. Depanelising
 - vi. 100% testing
 - vii. Casting attach
 - viii. 100% testing
 - ix. Ink marking
 - x. Blister pack
 - xi. OQC
 - xii. Packing
- e) Software development
- f) Testing technology and facilities
- g) Research and development incidental to producing the product.

Petitioner has carried out all the above activities in COB substrate based flash drive produced and sold by them.

- xvii. There is no obligation on the part of Moser Baer to disclose the legal proceedings going on against the Company. Nevertheless, vide order dated 14.10.2014, Hon'ble Delhi High Court has already disposed of the winding up petition.

Examination of the Authority

17. The various submissions made by the interested parties with regard to the scope of domestic industry & standing and considered relevant by the Authority are examined and addressed as follows:

- i. The application in the present investigation has been filed by Storage Media Products Manufacturers & Marketers Welfare Association on behalf of the domestic producer represented by Moser Baer India Limited. Moser Baer provided the required data for the purpose of the present investigation.
- ii. In the above context, Authority notes that Rule 2(b) of the Anti-dumping Rules defines domestic industry as under: -

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

- iii. As regards the contention that Amkette and Om Nanotech Pvt. Ltd. are also the producers of subject goods in India, the Authority notes that post initiation the said companies were requested to provide required information, but no response was received from them. In view of this position, Amkette and Om Nanotech Pvt. Ltd cannot be considered as constituting domestic industry under the Rules.
- iv. As regards the submission of the interested parties that Moser Baer does not form part of the domestic industry because it imports major constituents of the PUC (for example NAND), the Authority notes that import of raw materials, components etc from the subject country does not disqualify a domestic producer to be treated as domestic industry under the Anti-dumping Rules.
- v. As regards the contention that if COB is considered as a part of the PUC, Moser Baer should not be considered to be a part of the domestic industry on account of it admittedly importing COB, the Authority notes that the domestic industry has clarified that they have not imported COB as such from the subject countries during the POI, but imported components of COB to manufacture and supply COB flash drives in the market. In view of this position, the imports of components of COB do not disqualify M/s Moser Baer India Limited from being considered as domestic industry under the Rules. Moreover, the Authority notes that the value addition from COB components to COB based flash drives is about ***% to ***%.

18. After detailed examination the Authority determines that M/s Moser Baer India Limited accounts for a major proportion of the total domestic production of the subject goods during the POI and thus 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.

D. CONFIDENTIALITY

Submissions made by Exporters, Importers, Users and other Interested Parties

19. The submissions made by the producers/exporters/importers/other interested parties with regard to confidentiality during the course of the investigation and considered relevant by the Authority are as follows:

- i. Excessive confidentiality has been claimed by the petitioner in the petition.
- ii. It is up to the authority to object to the request made by the exporters providing the information and not for the domestic industry to raise doubts regarding the confidentiality claims made by the exporters.

Submissions made by the Domestic industry

20. The submissions made by the domestic industry with regard to confidentiality during the course of the investigation and considered relevant by the Authority are as follows:

- i. The interested parties have resorted to excessive confidentiality in the questionnaire responses filed by them.
- ii. Non-confidential versions of the questionnaire responses filed by the exporters are grossly inadequate.
- iii. The petitioner is not required to disclose such information which is confidential information of the company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the petitioner has not disclosed before public at large in the past;

EXAMINATION BY THE AUTHORITY

21. The submissions made by the interested parties with regard to confidentiality and considered relevant by the Authority are examined and addressed as follows:

- i. With regard to confidentiality of information Rule 7 of Anti-dumping Rules provides as follows:-

Confidential information: (1) Notwithstanding anything contained in sub-rules and(7)ofrule6,sub-rule(2),(3)(2)ofrule12,sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications

received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

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

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

22. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.

E. MISCELLANEOUS SUBMISSIONS

Submissions made by Exporters, Importers, Users and other Interested Parties

23. Miscellaneous submissions made by the producers/exporters/importers/other interested parties, considered relevant by the Authority, are as follows:

- i. The imports of the subject goods are exempted from levy of customs duty in public interest. Thus any imposition of Anti-dumping duty (ADD) will be against the policy of the Government of India which is encouraging duty free imports.
- ii. Since the initiation of the investigation petitioner has provided four separate sets of import data before the DGAD. However, the data so provided, presumably obtained from the same source, varies significantly. Considering the significant discrepancies between the four sets of data provided by the petitioner, it is urged that the DGAD shall

closely scrutinize the data and verify its accuracy as the import statistics submitted by the petitioner are unreliable.

- iii. The imposition of anti-dumping duty will adversely affect one lakh persons connected to the industry in India along with end user of products including students and the persons from all strata of the society. The interest of Indian consumer and the availability of high quality innovative products need to be considered and the claim of Moser Baer should be rejected. Authority should take into account the concerns of the huge retail industry in India before imposing such duty.
- iv. Moreover, the subject product is a consumer good and the Domestic Industry by its own admission has no real competition in the domestic market and is only facing competition from imports. Thus, any imposition of an anti-dumping duty will create an unfair advantage in favor of a particular company at the prejudice of the Indian consumer and will hamper competition in the market.
- v. The application filed by domestic industry is misuse of law and MBIL being sole domestic producer, application has been filed with mala fide intent of gaining unfair advantage in form of complete monopoly in respect to subject goods in the domestic market.
- vi. Initiation proceedings are invalid for want of compliance with Rules 5(2) and (3) of AD Rules. The application filed by domestic industry lacks accuracy, adequacy and support of evidence of dumping, injury and causal link. Thus the investigation needs to be terminated forth with.
- vii. The total installed capacity of domestic industry is barely 15.2% and is unable to cater domestic demand. Imposition of anti-dumping duty is unjustified and against public interest.
- viii. While the information provided in the Petition indicates that the volume of imports of the PUC had increased by 228.6% over the period of injury, the revised information based on secondary data submitted by the Petitioner vide letter dated 11 July 2014, indicates a mere 41.59% increase in the volume of imports of the PUC over the period of injury. The repeated changes in volume and value of imports demonstrate the unreliability of the data provided by the petitioner.

Submissions made by the Domestic industry

24. The miscellaneous submissions made by the domestic industry during the course of the investigation and considered relevant by the Authority are as follows:

- i. There is nothing misleading in the petition. The petition contains all available information with regard to type of the product imported into the country and type of the product supplied by the domestic industry.
- ii. There is no procedural defect. The interested parties have applied different standards with regard to their own information and information provided by the petitioner.
- iii. The petitioner has provided information that was reasonably available to the petitioner as required by Article 5.2 and claimed normal value on the basis of positive evidences.
- iv. The claim of injury is based on positive evidence and considering an objective analysis of the performance of the domestic industry over the injury period. The information with regard to injury is based on records maintained by the petitioner and therefore the claim constitutes positive evidence.

EXAMINATION BY THE AUTHORITY

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

- i. As regards the argument of the opposite interested parties that the petition is deficient and therefore the investigation needs to be terminated, the Authority notes that the present investigation was initiated on the basis of prima facie evidence furnished by the domestic industry showing dumping, injury and causal link and justifying initiation of the investigation in accordance with the Act and Rules. The Authority has also called for additional information wherever required and verified the information furnished by the domestic industry.
- ii. As regards the argument of the opposite interested parties that the imports of the subject goods are exempted from levy of customs duty in public interest and therefore any imposition of Anti-dumping duty (ADD) will also be against the policy of the Government of India which is encouraging duty free imports, the Authority notes that the intent of imposition of anti-dumping measures is to create a level playing field for the domestic industry vis-à-vis the unfair trade practice of dumping.

- iii. As regards the argument of the opposite interested parties alleging unreliability of the import data provided by the petitioner, the Authority notes that the imports data obtained from the DGCI&S has been relied upon in the present investigation.
- iv. As regards the argument of the opposite interested parties that imposition of anti-dumping duty will have adverse effect on the end-users/consumer/retailers, the Authority notes that the objective of imposition of anti-dumping measures is to create a level playing field for the domestic industry vis-à-vis the unfair trade practice of dumping. Although it cannot be denied that the imposition of anti-dumping duty may have a cost push effect on the prices of end products, nevertheless the undue advantages of dumping hitherto enjoyed by the end-users/consumer/retailers gets rectified after imposition of anti-dumping duty. Fair competition in the Indian market will not be reduced by the anti-dumping duties, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury caused to the domestic industry. On the contrary, imposition of the anti-dumping duties would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the users/consumers of the subject goods. Therefore, the arguments that imposition of anti-dumping duty would have adverse effect on the end-users/consumer/retailers are without any basis.
- v. As regards the argument of the opposite interested parties that Moser Baer being the sole domestic producer, imposition of anti-dumping duty may give them monopoly in respect to subject goods in the domestic market, the Authority notes that the anti-dumping law does not bar sole producer from being considered as domestic industry. Moreover, imposition of anti-dumping measures neither prevents nor restricts imports of the subject goods. Therefore, the arguments that imposition of anti-dumping measures may give monopoly to the sole domestic industry, is baseless.
- vi. As regards the submission that domestic industry is not capable of meeting the entire demand in the country and import is inevitable, the Authority notes that there is no legal provision mandating the domestic industry to meet the entire demand in the country and have to gain adequate capacity to this end, before seeking redressal of injury caused to it on account of dumping. Further, imposition of anti-dumping measures neither prevents nor restricts imports.

26. In the present investigation, the following producers/exporters have filed exporter's questionnaire response:

- A. SanDisk Manufacturing, Ireland, SanDisk Semiconductor (Shanghai) Co Ltd, China PR, SanDisk Trading (Shanghai) Co Ltd, China PR, SanDisk International Ltd, Ireland, UTAC Hong Kong Ltd, Hong Kong, UTAC Dongguan Ltd, China PR, STATS ChipPAC Shanghai Co Ltd, Shanghai, China PR, STATS ChipPAC (BVI), Ltd, British Verginia Island and Flextronics Marketing (L) Ltd, Lubuan, Malaysia.
- B. PNY Technologies Asia Pacific, Taiwan and PNY Technologies Inc, Shenzhen Representative Office, China.
- C. ATP Electronics, Taiwan, Inc, Taiwan.
- D. Sony Supply Chain Solutions, Japan, Sony EMCS Corp, Japan, Sony Corporation, Japan, Sony Electronics Asia Pacific PTE Ltd, Singapore.
- E. ADATA Technology (Suzhou) Co., Ltd, China PR and ADATA Technology Corporation Limited, Taiwan.
- F. Kaifa Technology Hong Kong Ltd, Hong Kong, Kingston Digital International Ltd, Ireland (KDIL), Kingston Technology Far East Corporation, Taiwan (KTFE) and Shenzhen Kaifa Micro Electronics Co Ltd, China (SKMEC).
- G. Transcend Information (Shanghai) Co Ltd, China PR, Transcend Trading (Shanghai) Co Ltd, China PR and Transcend Information Inc, Taiwan.

27. The following unrelated contractual manufacturing service providers of SanDisk, Ireland filed belated EQ responses:

- i. STATSChipPAC Shanghai Co Ltd (SCC).
- ii. STATSChipPAC (BVI) Co Ltd.
- iii. UTAC Dongguan Ltd (UDG).
- iv. UTAC Hong Kong Ltd.
- v. Flextronics Marketing (L) Ltd.

28. The following Chinese producers/exporters also filed Market Economy Treatment (MET) questionnaire response and claimed market economy status:

- i. SanDisk Semiconductor (Shanghai) Co Ltd, China PR.
- ii. SanDisk Trading (Shanghai) Co Ltd, China PR.
- iii. UTAC Dongguan Ltd, China PR.

- iv. STATS ChipPAC Shanghai Co Ltd, Shanghai, China PR.
- v. Shenzhen Kaifa Micro Electronics Co Ltd, China PR.
- vi. Transcend Information (Shanghai) Co Ltd, China PR.
- vii. Transcend Trading (Shanghai) Co Ltd, China PR.

29. The position of the producers/exporters who have filed exporters questionnaire responses are examined as follows:

- A. SanDisk Manufacturing, Ireland, SanDisk Semiconductor (Shanghai) Co Ltd, China PR, SanDisk Trading (Shanghai) Co Ltd, China PR, SanDisk International Ltd, Ireland, UTAC Hong Kong Ltd, Hong Kong, UTAC Dongguan Ltd, China PR, STATS ChipPAC Shanghai Co Ltd, Shanghai, China PR, STATS ChipPAC (BVI), Ltd, British Virgin Island, Flextronics Marketing (L) Ltd, Lubuan, Malaysia.

A.1 SanDisk Manufacturing, Ireland (SDM)

30. As evident from the EQ responses and subsequent correspondences, SanDisk Manufacturing, Ireland, SanDisk Semiconductor (Shanghai) Co Ltd, China PR, SanDisk Trading (Shanghai) Co Ltd, China PR and SanDisk International Ltd, Ireland are related companies. SanDisk Manufacturing, Ireland (SDM) filed exporter's questionnaire response claiming to be a producer of the subject goods. SDM, Ireland declared its factory address as that of its related Chinese Company i.e. SanDisk Semiconductor (Shanghai) Co Ltd (SDSS), Shanghai, China PR.

31. As stated in the EQR and subsequent correspondences filed by SDM, Ireland, they have toll processing contract with SanDisk Semiconductor (Shanghai) Co Ltd (SDSS), Shanghai, China PR. They also have Technology Services Agreement with SanDisk Information (Technology) Shanghai Co Ltd for R&D services and Distribution Agreement with SanDisk International Ltd (SDI), Ireland and SanDisk Trading Shanghai Co Ltd, China PR and other related/non-related companies situated in Ireland, China PR etc. In terms of the toll processing contract, SDM, Ireland procures *** from its related company i.e. ***, Japan and supplies the same to SDSS, China for production of the subject goods. SDSS, China carries out Known Good Die (KGD) processing on the material received from SDM, Ireland and supplies the said material to other contractual manufacturers in China and Taiwan for further processing. Once SDSS completes KGD Processing, the memory components are shipped out to various manufacturers for completing subsequent production processes. As stated in the EQ response, SDM, Ireland has entered in to a number of contractual arrangements with various other third party manufacturers to carry out the production of the subject goods. Once all the production processes are completed by various other manufacturers situated in China, Taiwan, Malaysia, etc, the subject goods are

shipped back to SDSS, China, who carries out the Retail Fulfillment Processing (RFP).

32. As stated in the EQ response, SDM, Ireland, sells product concerned in Indian market through SanDisk International Ltd Ireland and in China market through Sandisk Trading Shanghai Co Ltd China PR on service payment basis. As regards the exports to India, after the RFP processing is completed, SDSS, China physically exports the subject goods to India. While the subject goods move to India directly from SDSS, China, the invoicing is done by SDM, Ireland in favour of SDI, Ireland and the later company invoices the subject goods to the Indian importers. As claimed in the EQ response, SDM, Ireland, which owns the finished subject goods throughout the production processes, passes the legal title over the subject goods to SanDisk International Ltd, Ireland and the later in turn passes the legal right to the importers in India. The third party contractual manufacturers including SDSS, China (who physically exports the final product to India) do not have any legal right over the product concerned.

A.2 SanDisk Semiconductor (Shanghai) Co Ltd (SDSS), China PR

33. SDSS, China PR is a related company of SDM, Ireland. As stated in the EQ response filed by SDSS, China PR, it is not a producer of the subject goods. As further stated in the EQ response, SDSS, China PR neither sales the subject goods in domestic market nor exports the subject goods to India. As stated in the EQ response, SDSS China passes on the *** received from SDM, Ireland after carrying out KGD process (quality assurance) to other supporting manufacturers for manufacturing of the subject goods and does the RFP process (retail packing) after receiving the finished subject goods. The Company claimed to be merely involved in a job work i.e. KGD and RFP processing of the subject goods through a contract entered in to with SDM, Ireland, its related company situated in Ireland. The subject goods are produced by various other manufacturers situated in various countries who have entered in to contracts with SDM, Ireland, whereas SDSS, China takes care of only KGD and RFP processing i.e. quality assurance and retail packaging.

A.3 SanDisk International Ltd (SDI), Ireland

34. SanDisk International Ltd (SDI), Ireland is related company of SDM, Ireland and SDSS, China PR. SDI, Ireland is ***% owned by SDM, Ireland. As stated in the EQ response SDI, Ireland is not involved in the production of subject goods. It merely purchases the subject goods from SDM, Ireland in terms of the Distribution Agreement and exports to India and China PR.

A.4 SanDisk Trading (Shanghai) Co Ltd, China PR

35. SanDisk Trading (Shanghai) Co Ltd, China PR is a related company of SDM, Ireland, SDI, Ireland and SDSS, China. SanDisk Trading (Shanghai) Co Ltd, China PR is stated to be an investment company, involved in trading of the subject goods. As claimed in the EQ response filed by the Company, it is involved in sales of subject goods in China PR through distribution agreement with SDM, Ireland and not involved in export of subject goods to India.

A.5 STATS Chip PAC Shanghai Co Ltd (SCC) and STATS Chip PAC (BVI) Co Ltd.

36. As per the EQ responses filed, STATS Chip PAC Shanghai Co Ltd (SCC, Shanghai, China PR) and STATS Chip PAC (SC, BVI) Co Ltd are related companies situated in China PR and British Verginia Island (BVI) respectively. SC(BVI) is a wholly-owned subsidiary of STATS ChipPAC Ltd. Singapore. As stated in the EQ responses, SC (BVI) has an agreement with ***, Ireland for contract manufacturing of the subject goods. SC (BVI) Limited and SCC, Shanghai, China PR have entered into a *** Agreement. Whereas the *** is SC (BVI), SCC, Shanghai, China PR is the ***. SCC purchases various raw materials from different suppliers. It also gets consigned material from SDM Ireland. As stated in the EQ response, SC(BVI) is not involved in the ***and SCC, Shanghai, China PR is involved only in the *** for the product concerned. Neither SC (BVI) nor its subsidiary, SCC Shanghai, China PR is involved in export/home market sale of subject goods. They merely provide *** to ***, Ireland as per the contractual obligation.

A.6 UTAC Dongguan Ltd (UDG) China PR and UTAC Hong Kong Ltd (UHK)

37. As evident in the EQ responses filed, UTAC Dongguan Ltd (UDG), China PR and UTAC Hong Kong Ltd(UHK) are related companies situated in China PR and Hong Kong respectively. UHK has an agreement with SDM, Ireland for the production of assembled USB modules on consignment basis. As stated in the EQ responses, neither UHK nor UDG are involved in the production or sale of the subject goods. UHK is involved in providing USB modules on a sub-contract basis to SanDisk Manufacturing, Ireland and UHK, in turn, sub-contracts out the production of these USB modules to UDG. UDG charges a production fee on UHK and UHK invoices SDM.

A.7 Flextronics Marketing (L) Ltd

38. As evident in the EQ response filed, Flextronics Marketing (L) Ltd (FML), Malaysia was established by Flextronics International Ltd (FIL), Singapore. As per the EQ response, neither FML nor FIL is engaged in the production or sale of the subject goods under the SanDisk brand name neither in India nor

in home country. FML has been engaged by SanDisk Manufacturing Ireland to provide manufacturing service in relation to the subject goods. FML has in turn engaged manufacturing companies to perform contract manufacturing service in relation to the subject goods. The subject goods are then supplied by FML to SanDisk for SanDisk's onward handling.

39. In response to the queries raised by the Authority, SanDisk informed the following:

- i. SanDisk Manufacturing, Ireland (SDM) is the producer on record who gets the products physically manufactured through its related entity SanDisk Semi-conductor (Shanghai) Co Ltd (SDSS). SDM has no factory either in Ireland or in People's Republic of China ("China").
- ii. SDM sells the product to SanDisk International Ltd, Ireland who exports the product to India.
- iii. SDM procures *** from Japan but directs the suppliers to deliver the *** to SDSS, China.
- iv. SDSS renders the service of carrying out Known Good Die (KGD) process on the *** to ensure that the *** that meet the required quality standards are delivered by SDSS to other unrelated contract manufacturers.
- v. On receipt of ***, MSPs provide manufacturing services at various stages of production i.e. they build the *** according to the technology and design provided by SDM.
- vi. The other unrelated manufacturing service providers (MSPs) who are involved in the production process are as follows:
 - a. ***, China PR.
 - b. ***, China PR
 - c. ***, China PR.
 - d. ***, China PR.
 - e. ***, China PR.
 - f. ***, Taiwan.
 - g. ***, Taiwan.
 - h. ***, Taiwan.
- vii. The MSPs deliver *** to SDSS. Upon receipt of the ***, SDSS carries out retail fulfillment processes (RFP) and completes the production chain.

- viii. SDM retains ownership over the ***through the manufacturing process and retains the legal rights over the final products.
- ix. For exports to India, SDSS physically ships the goods from China directly to India on behalf of, and as directed by, SDM.
- x. In so far as financial flow is concerned, as SDM owns the title to the goods, SDM raises the invoice on SDI, Ireland who in turn raises the invoice on the unrelated Indian customers. The export to India is effected by (a) sale by SDM to SDI and (b) sale by SDI to Indian customers.
- xi. For effecting domestic sales within China, SDSS physically shifts or transfers the goods to a custom bonded area within China. Since SDM owns the title to the goods, SDM effects the exports from domestic area of China to a custom bonded warehouse located within China. From the custom bonded warehouse, SDM exports the goods to China for domestic sales. During ***, SDM raised invoices on SDI, who in turn raised invoices on Chinese customers. During ***, SDM raised invoices on another related company named SanDisk Trading (Shanghai) Co Ltd, China, who in turn raised invoices on Chinese customers. It is immaterial whether the goods have been sold from within China to within China or the goods have taken a circuitous route. Irrespective of the route, since the goods are destined for consumption in China, they shall be considered for determining normal value.
- xii. KGD process involves testing and identification of *** that meet the required standards of quality and reliability. RFP process is the USB Packing process for retail market. Total KGD and RFP processing accounted for ***%-***% of total cost.
- xiii. Since MSPs are not to be treated as producers, there is no need for them to file a response in the AD investigation. Since SDSS China is a related MSP and not a producer as such, they have filed a response. However, the combination, "SDM through SDSS" may be treated as the producer in the present investigation.
- xiv. Neither, SDM, Ireland nor SDI, Ireland nor SDSS, China PR require export license.
- xv. SDTS has no role in production/export of the subject goods to India during POI. The customers of SDTS who purchased the goods from SDTS did not export those goods to India.

- xvi. SDM is the producer of the subject goods whose normal value is required to be taken. Since SDM has sold the goods in the domestic market of the exporting country through SDI as well as SDTS, sale prices of SDI and SDTS when the goods are destined for consumption in China PR shall form the basis for calculating normal value.
- xvii. SDM and SDI are exporters of the subject goods. For determining dumping margin, ex-factory export price of SDM is required to be taken. For determining injury margin, SDI's landed price is to be taken.

40. The following are the post hearing submissions made by SanDisk group as regards their transactions:

- i. SDSS, China which carries out the physical process of the goods (KGD and RFP) should be considered as producer of the subject goods. The built-in USB drives are delivered by the contract manufacturers to SDSS, China who carries out certain testing and all the required retail fulfillment processes. The finished USB drives are shipped by SDSS China to customers in India directly according to the directions of SDM, Ireland. Goods are physically shipped by SDSS, China to India. However, Invoice is raised by SDM, Ireland to SDI, Ireland and SDI, Ireland in-turn raises the invoice on Indian customers.
- ii. All the contract manufacturers send the goods to SDSS, China and the goods are shipped by SDSS from its factory only. The shipping documents filed with the China customs at the time of exports to India show SDSS as the exporter on record.
- iii. In addition to the contract manufacturers who have filed EQ responses, there is one more contract manufacturer namely Global Brands Manufacture Ltd., (GBM). The same company has not cooperated with the DGAD and has not filed the EQ response in the present investigation. In terms of value addition, the unrelated contract manufacturers account for only ***% of the total cost of production. The share of GBM who has not cooperated in this investigation accounted for ***% of the said ***%. Thus, the share of contract manufacturers who did not cooperate was only ***% of the total cost (i.e. ***% of ***%). In so far as the remaining ***% of the costs are concerned, all the relevant entities (whether related or unrelated) have cooperated. Thus, the entities that have filed their responses before the authority account for ***% of the value chain. SanDisk tried its best to impress upon GBM to cooperate with the

DGAD in this investigation. However, despite its best efforts, GBM has not cooperated in this investigation.

- iv. SDSS, China is the producer of the goods as it is involved in the physical production processes including the first and last stage processes (KGD and RFP). However, SDM Ireland only holds the legal title over the goods i.e. it has the ownership of the goods as well as enters into agreements with all the contract manufacturers. The expenses are ultimately borne by SDM Ireland. Accordingly, the overall manufacturing costs and sales revenues are available in the books of SDM Ireland. While from a control and ownership perspective SDM Ireland is the producer of the goods, from the production process perspective, SDSS, China is the producer and therefore SDSS, China should be treated as the producer of the goods for the purpose of the present investigation.
- v. Thus, SDSS, China is the producer of the goods as it is involved in the physical production processes including the first and last stage processes. However, SDSS carries out these operations as a job work on behalf of SDM Ireland. The SDM Ireland is the legal entity that is involved in conducting the business relating to USB drives. SDM Ireland holds the legal title over the goods i.e. it has the ownership of the goods as well as enters into agreements with all the contract manufacturers. The expenses are ultimately borne by SDM Ireland. Accordingly, the overall manufacturing costs and sales revenues are available in the books of SDM Ireland. Only from a control and ownership perspective, SanDisk has claimed SDM Ireland as the producer of the goods. However, from the production process perspective, SDSS, China is the producer.

Examination by the Authority

41. On the basis of the EQ response and subsequent information filed by SDM, Ireland and other related/unrelated concerns, the Authority notes the following:
- i. Ireland is not a subject country in the present investigation. Therefore, SDM Ireland, which claimed to be a producer of the subject goods without having even a plant of its own, cannot be treated as a producer in the present investigation.
 - ii. The claim that SDM, Ireland is the producer of the subject goods whose normal value is required to be taken is baseless. The Authority notes that in an anti-dumping

investigation, determination of normal value is an essential component of calculating dumping margin in respect of exporters from the subject countries. Ireland not being a subject country in the present investigation, normal value cannot be determined on the basis of data/information pertaining to SDM, Ireland.

- iii. Contrary to the facts given in the EQ response, post hearing it has been claimed that SDSS China should be considered as producer of the subject goods because it is involved in the KGD and RFP processes. The Authority notes that these processes are mere quality testing and packing processes and do not constitute production of subject goods as such. Moreover, SDSS China has not furnished the complete information concerning production, costing and sales of the subject goods. Therefore, SDSS China cannot be considered as the producer of the subject goods from the point of view of determining normal value and dumping margin.
- iv. SDSS, China, whose plant SDM, Ireland claims to be of its own, does not itself claim to be a producer of the subject goods in its EQ response. Although subsequently, it has been claimed that SDSS, China is a producer of subject goods, it is also an acknowledged fact that SDSS China is merely involved only in the Known Good Die (KGD) processing and Retail Fulfillment Processing (RFP). While the KGD process is stated to be testing and identification of *** that meet the required standards of quality and reliability, RFP process is stated to be the USB Packing process for retail market. Thus, both these processes do not constitute manufacturing of the subject goods as such, and as informed by SanDisk themselves, these processes merely account for only ***% to ****% of the total cost of production of the subject goods. Therefore, SDSS, China cannot be considered as a producer of the subject goods.
- v. In fact, the entire production of the subject goods is acknowledged to be carried out by a host of other producers, majority of whom have not cooperated with the Authority and have not filed EQ response in present investigation. Although, at a much belated stage, EQ responses have been filed on behalf of STATS Chip PAC Shanghai Co Ltd (SCC), STATS Chip PAC (BVI) Co Ltd., UTAC Dongguan Ltd (UDG), UTAC Hong Kong Ltd.,

Flextronics Marketing (L) Ltd, none of these companies are found to be involved in substantial production activity.

- vi. The Authority further notes that STATS Chip PAC Shanghai Co Ltd (SCC), STATS Chip PAC (BVI) Co Ltd are acknowledgedly involved only in *** services. Moreover, STATS Chip PAC (BVI) Co Ltd does not belong to subject countries. As regards the EQ responses filed by UTAC Dongguan Ltd (UDG) and UTAC Hong Kong Ltd, the Authority notes that UTAC Hong Kong Ltd is acknowledgedly not involved in any production activity. As regards UDG, it is stated to be not involved in the production of the subject goods as such, but involved only for certain limited services. As regards Flextronics Marketing (L) Ltd, Malaysia, the Authority notes that Malaysia is not subject country and the said company is acknowledged to be not involved in any production activity.
- vii. As per the information furnished by Flextronics Marketing (L) Ltd (FML”), Malaysia, it is evident that it has been engaged by SanDisk to provide manufacturing service in relation to the subject goods. As stated in the EQ response, FML does not own any factory. FML has in turn engaged manufacturing companies to perform contract manufacturing service in relation to the subject goods. The subject goods are then supplied by FML to SanDisk for SanDisk’s onward handling. But it is not clear how FML without having a factory for manufacturing the subject goods was engaged by SanDisk. Moreover, detailed information regarding the other manufacturers who have been engaged by FML for manufacturing the subject goods have not been made available.
- viii. It has been claimed by SanDisk that the entities that have filed their responses before the authority account for ****% of the total value chain and the only company which account for balance ****% of value chain and which has not filed EQ response in the present investigation is Global Brands Manufacture Ltd., (GBM). However, in response to the queries raised by the Authority, it has been informed by SanDisk that the other unrelated manufacturers, who have been termed by SanDisk as unrelated manufacturing service providers (MSPs), and involved in the production process of the subject goods exported to India are ***China PR, ***, China PR, ***, China PR, ***, China PR,

***, China PR, ***, Taiwan, ***, Taiwan and ***, Taiwan. Among these companies, while ***, China PR and ***, China PR have filed much belated EQ response, the other listed unrelated manufacturers have not filed EQ response in the present investigation. Therefore, the Authority notes, the claim made by SanDisk that ***% of value chain is before the Authority is found to be incorrect and baseless.

- ix. As claimed by SanDisk, the *** is procured from ***, Japan by SDM, Ireland and supplied to SDSS China, who in turn, after testing the quality, passes the same on to other manufacturers for production of the subject goods. After receiving back the finished subject goods from the other manufacturers, SDSS, China does the retail packaging and physically and directly exports the subject goods to India, although the invoicing for the said transactions are stated to be done by SDM, Ireland on SDI, Ireland and then to Indian importers. It is also claimed that the shipping documents filed with the China customs at the time of exports to India show SDSS as the exporter on record. However, SDSS China in its EQ response has not claimed itself to be the exporter. The Authority notes that since the subject goods are physically flowing from the premises of SDSS, China to India, then it is essential that SDSS, China must have export license and also complete the documentary formalities concerning exports of the subject goods. But, none of these information/documents have been furnished by SDSS, China. Moreover, when the exports of the subject goods are claimed to be originating from SDSS China, the invoicing for the said exports to India are claimed to be done by SDM, Ireland on SDI, Ireland and then to India. Such invoicing does not reflect the complete flow. Since the subject goods exported to India are claimed to be originating from SDSS China, invoicing by SDSS, China on SDM, Ireland is a must for evidencing complete transaction flow of the goods from SDSS China to SDM Ireland and from SDM Ireland to SDI Ireland and from SDI Ireland to India. In the event of absence of invoicing by SDSS China on SDM Ireland it is not understood how the goods are moving from SDSS, China to SDM, Ireland after satisfying legal/taxation requirements.

- x. As regards the domestic sales, the Authority notes that the flow of the subject goods claimed to have been made from SDSS, China to the domestic market in China is circuitous. If the subject goods sold in the domestic market have originated from SDSS, China and travelled through a Customs bonded area involving foreign entities like SDM, Ireland and SDI, Ireland, then it cannot be treated as domestic sales and therefore cannot be considered as a valid domestic sale for the purpose of determination of normal value.

42. The Authority notes that in an anti-dumping investigation, it is critical to determine dumping margin and injury margin for arriving at quantum of the anti-dumping measures. For determining dumping margin, determination of normal value in respect of the producers in the subject country and availability of information covering the complete value chain of production and sale of the subject goods are the basic prerequisites. In the present investigation, Ireland is not a subject country. Only companies belonging to Ireland are involved in the export of the subject goods to India originating in China. Therefore, SDM, Ireland, which claimed to be a producer of the subject goods, has no locus standi in the present investigation. SDSS, China, which is involved in the KGD and RFP processing only, does not qualify to be treated as a producer of the subject goods as such. Further, a host of other manufacturers belonging to various countries are involved in the manufacturing of the subject goods, most of whom have either not furnished complete information or not cooperated with the Authority by filing EQ response. The Authority further notes that the physical as well as commercial flow of the subject goods from SDSS, China to India is also not complete. SDSS, China has not furnished information/documents evidencing physical shipment of subject goods from China to India. Further, SDSS, China has not furnished information concerning invoicing of the subject goods to SDM, Ireland for the onward invoicing to India through SDI, Ireland.

43. In view of the above position and due to absence of complete value chain of production and sale of the subject goods claimed to have been exported by the respondent companies to India during the POI, the EQ responses filed by SanDisk group companies and the contract manufacturers have not been accepted by the Authority for determination of individual margins.

B. ATP Electronics, Taiwan Inc, Taiwan

44. As per the EQ response and subsequent information furnished by ATP Electronics, Taiwan, the Company is stated to be a producer/exporter of subject goods. The major shareholders of the Company are stated to be ***,

Taiwan and ***, Taiwan. In the EQ response, ATP Electronics, Taiwan has declared ***, Taiwan as its factory address for the production of subject goods. ATP Electronics, Shanghai, China PR is also declared as a related company involved in the production and sale of subject goods.

45. As per the EQ response and subsequent information furnished by ATP Electronics, Taiwan, subject goods produced and supplied by ***, Taiwan are exported to India by the related Company ATP Electronics, Taiwan through Sony Supply Sales Chain Solutions, Japan, Sony EMCS, Japan, Sony Corporation, Japan and finally Sony Electronics Asia Pacific, Singapore to Sony India. This sales channel constitutes about ***% of the total sales of subject goods to India by ATP Electronics, Taiwan during the POI. Subject goods exported through Sony route are sold with Sony brand in the market.

46. ATP Electronics, Taiwan also exports the subject goods through ***, China. This channel accounts for about ***% of the total sales of subject goods made by ATP Electronics, Taiwan to India during the POI.

47. In response to the queries raised by the Authority, the following have been informed:

- i. ATP, Taiwan is a producer of the subject goods. ATP, Taiwan gets the subject goods assembled and packaged on job work basis from ***. ATP Taiwan supplies the raw materials and pays the charges for assembling and packaging to ***. At all stages of these activities, the ownership of the subject goods remains with ATP. It is ATP, Taiwan whose normal value is to be determined by the Authority.
- ii. The subject goods are exported by ATP Taiwan through Sony group companies in Japan and Singapore namely Sony Supply Chain Solution, Inc, Japan, Sony EMCS Corporation, Japan, Sony Corporation, Japan and Sony Electronics Asia Pacific, Singapore.
- iii. From ATP, Taiwan, the subject goods move both directly to India and as well as indirectly via ***, China, where the goods are packed and from ***, they move to Hong Kong, from where the goods are dispatched to India. The role of ***, China is similar to that of a trucker who undertakes a service and gets paid for the services rendered. Hence, no response has been filed on behalf of ***.
- iv. ATP Electronics Shanghai, China PR, a related company, is not involved in the sale of subject goods either in Taiwanese domestic market or exports to India. Therefore it has not filed EQ response in the present investigation.

- v. In Taiwan, there is no requirement of Export License for exportation of the subject goods.

Examination by the Authority

48. From the EQ response and subsequent information filed by ATP Electronics, Taiwan, the Authority notes the following:

- i. ATP Electronics, Taiwan is not a producer of the subject goods as it does not have a factory of its own for production of the subject goods. It claimed the factory of its related company namely ***, Taiwan as its factory for the subject goods. The Authority notes that despite being a related company and the acknowledged involvement in the production of the subject goods, ***, Taiwan has not cooperated and filed EQ response in the present investigation. Therefore, normal value cannot be determined by the Authority for ATP Electronics, Taiwan.
- ii. The Authority notes that the subject goods produced and supplied by ***, Taiwan are exported to India by the related Company ATP Electronics, Taiwan through Sony Supply Sales Chain Solutions, Japan, Sony EMCS, Japan, Sony Corporation, Japan and finally Sony Electronics Asia Pacific, Singapore to Sony India. This sales channel constitutes only ***% of the total sales of subject goods to India by ATP Electronics, Taiwan during the POI. ***% of the export of the subject goods made by ATP Electronics, Taiwan is through ***, China, which company has not cooperated and has not filed EQ response in the present investigation.
- iii. Further, it is an admitted position that the exports made through ***, China have been routed through some party in Hong Kong which has not filed EQ response.

49. In view of the above position and due to absence of complete value chain of production and sale of the subject goods claimed to have been exported to India during the POI, the Authority does not accept the EQ response filed by ATP Electronics, Taiwan for determination of individual margins.

C. ADATA Technology Corporation Limited, Taiwan and ADATA Technology (Suzhou) Co., Ltd, China PR

C.1 ADATA Technology Corporation Limited, Taiwan

50. In the EQ response and subsequent information furnished by ADATA Technology Corporation Limited, Taiwan, the Company has claimed itself as a producer of subject goods and declared its factory address as that of ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR and Carry Technology Co Ltd, Taipei, Taiwan. As stated in the EQ response, ADATA Technology Corporation Limited, Taiwan has purchase agreement with ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR and processing agreement with Carry Technology Co Ltd, Taipei, Taiwan. ADATA Technology Corporation Ltd, Taiwan procures semi-finished products from ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR through purchase agreement and gets the same processed by Carry Technology Co Ltd, Taipei, Taiwan through processing Agreement. As stated in the EQ response, It also has subsidiaries involved in manufacturing/trading of the subject goods in the subject countries and also elsewhere.

51. Agreements are there between ADATA Technology Corporation Ltd, Taiwan and ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR and also with ADATA, USA and ADATA, Hong Kong for sale of the subject goods. As stated in the EQR, ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR does not sell PUC on behalf of other companies. ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR has not exported the subject goods to India directly.

C.2 ADATA Technology (Suzhou) Co., Ltd, China PR

52. As per the EQ response and subsequent information, ADATA Technology (Suzhou) Co., Ltd, China PR is mainly engaged in the manufacture of electronic components and is a producer of subject goods. Principal shareholder of ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR is ADATA Technology (HK) Co Ltd, Hong Kong. ADATA Technology (HK) Co Ltd, Hong Kong is involved in finished and semi-finished UFD products. The subsidiary company involved in the subject goods in the subject countries are: ADATA Technology Co Ltd, Taipei, Taiwan. It supplies inputs for the subject goods to ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR. The subject goods produced by ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR are exported to India through ADATA Technology Co Ltd, Taipei, Taiwan physically and then the same are exported by ADATA Technology Co Ltd, Taipei, Taiwan to India through Sony Supply Chain Solutions, Japan, Sony EMCS, Japan, Sony Corporation, Japan and finally Sony Electronics

Asia Pacific, Singapore to Sony India. The Company furnished NCV information at a much belated stage post oral hearing.

Examination by the Authority

53. From the EQ response and subsequent information filed by ADATA Technology Corporation Ltd, Taiwan and ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR, the Authority notes the following:

- i. Although ADATA Technology Corporation Limited, Taiwan has claimed itself as a producer of subject goods, it does not have a factory of its own for production of subject goods. It declared the factory address of Carry Technology Co Ltd, Taipei, Taiwan and ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR as its own factory address. While ADATA Technology (Suzhou) Co Ltd is situated in China PR, Carry Technology Co Ltd, Taipei, Taiwan, despite being a related company and involved in the processing of the subject goods, has not cooperated and has not filed EQ response in the present investigation. Therefore, normal value cannot be determined by the Authority for ADATA Technology Corporation Limited, Taiwan.
- ii. As per the information furnished by ADATA Technology (Suzhou) Co., Ltd, China PR, its related companies namely ADATA Technology (HK) Co Ltd, Hong Kong and ADATA Technology Co Ltd, Taipei, Taiwan are involved in the finished and semi-finished UFD products. As claimed by the Company, the subject goods produced by ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR are exported to India through ADATA Technology Co Ltd, Taipei, Taiwan physically and then the same are exported by ADATA Technology Co Ltd, Taipei, Taiwan to India through Sony Supply Chain. But, the subsidiary companies involved in the production and sale of the subject goods in the subject countries namely ADATA Technology (HK) Co Ltd, Hong Kong and ADATA Technology Co Ltd, Taipei, Taiwan have also not cooperated and have not filed EQ response in the present investigation.
- iii. In the absence of EQ response by Carry Technology Co Ltd, Taipei, Taiwan, ADATA Technology (HK) Co Ltd, Hong Kong and ADATA Technology Co Ltd, Taipei, Taiwan, the complete value chain is not brought before the Authority and normal value and export price and therefore dumping margin cannot be determined as representative of ADATA Technology Corporation Ltd, Taiwan.

- iv. Despite requests, the respondent companies furnished the non-confidential version of their information at the much belated post hearing stage.

54. In view of the above position and due to absence of complete value chain of production and sale of the subject goods claimed to have been exported to India during the POI, the Authority does not accept the EQ response filed by ADATA Technology Corporation Ltd, Taiwan and ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR for determination of individual margins.

D. Sony Supply Chain Solutions, Japan, Sony EMCS Corp, Japan, Sony Corporation, Japan, Sony Electronics Asia Pacific PTE Ltd, Singapore.

55. As per the EQ response and subsequent information furnished by Sony Supply Chain Solutions, Japan, Sony EMCS Corp, Japan, Sony Corporation, Japan, Sony Electronics Asia Pacific PTE Ltd, Singapore, these are related companies. None of these companies are situated in the subject countries.

D.1 Sony Supply Chain Solutions (SSCS), Japan

56. As per the EQ response and subsequent information filed by Sony Supply Chain Solutions (SSCS), Japan, this Japanese company is ***% owned by Sony Corporation, Japan. It is a trading company and not a producer of subject goods. It procures the subject goods from ATP, Taiwan and ADATA, Taiwan and exports to India. Subject goods are also procured by SSCS, Japan from ATP, Hong Kong and Moduslink, China and exported to India.

57. While subject goods are physically exported by ATP, Taiwan and ADATA, Taiwan with Sony brand on behalf of Sony, invoices flow through SSCS, Japan, Sony EMCS Corporation (EMCS), Japan, Sony Corporation, Japan, and Sony Electronics Asia Pacific (SEAP), Singapore and finally imported by Sony, India.

D.2 Sony EMCS Corporation, Japan

58. As per the EQ response and subsequent information filed by Sony EMCS Corporation, Japan, this Company is ***% owned by Sony Corporation, Japan. As claimed in the EQ response, Sony EMCS Corporation, Japan is not a producer of subject goods, but produces other electronic goods. Sony EMCS, Corporation, Japan procured the subject goods, originating in China and Taiwan, from SSCS, Japan and supplied to Sony Corporation, Japan for export to India.

D.3 Sony Corporation, Japan

59. The following are stated in the EQ response filed by Sony Corporation, Japan:

- i. Sony Corporation, Japan does not produce the subject goods.
- ii. Sony Corporation, Japan procured subject goods, originating in China and Taiwan, from its subsidiary Sony EMCS, Japan and supplied to its related concern Sony Electronics Asia Pacific (SEAP), Singapore for export to India.

D.4 Sony Electronics Asia Pacific (SEAP), Singapore

60. The following are stated in the EQR filed by SEAP, Singapore:

- i. SEAP, Singapore is not a producer of subject goods.
- ii. SEAP, Singapore is *** owned subsidiary of Sony Corporation, Japan.
- iii. SEAP, Singapore is responsible for distribution of subject goods in the Asia Pacific region.
- iv. SEAP, Singapore exported to India subject goods originating from ATP, Taiwan and ADATA, China.
- v. Subject goods exported to India are also procured from ATP, Hong Kong and Moduslink, China.

61. In response to the queries raised by the Authority, the following have been informed:

- i. Sony Supply Chain Solutions, Japan (SSCS, J) is not a producer of subject goods. It procures the goods produced by ATP and then sells the same via Sony entities to India.
- ii. SSCS, Japan also procured the subject goods from ADATA Technology (Suzhou) Co. Ltd, China PR (“ADATA, China”) and exported to India.
- iii. Sony EMCS Corporation, Japan manufactures other electronic goods, but not subject goods.
- iv. Sony Corporation is not involved in the production of the subject goods. Sony Corporation has no domestic sales in the subject countries as well.
- v. Sony Electronics Asia Pacific PTE Ltd, Singapore (SEAP) is not involved in the production of the subject goods.

- vi. While ATP, Taiwan is a producer of the subject goods, after procuring an order, it assigns certain work on a job work basis to another entity, namely *** (***). As *** purely works for and on behalf of ATP, the ownership of the goods remains with ATP and hence, it is ATP who is considered correctly as the producer of the subject goods.
- vii. Sony Supply Chain Solutions, Inc, Japan (SSCS) is the first company that procures the subject goods from the respective producers (i.e. ATP, Taiwan and ADATA, China). SSCS then raises its invoice to the group company, Sony EMCS Corporation (EMCS). Thereafter, EMCS raises its invoice to Sony Corporation, Japan. Sony Corporation, Japan then raises the invoice of the subject goods to Sony Electronics Asia Pacific (SEAP), Singapore (being the distributor for the Asia-Pacific region). SEAP then sells the subject goods to India.
- viii. The subject goods from ATP have physically moved via two modes. One is direct from ATP's factory to Sony, India in India. The other is via the ***, Shenzhen, China PR and then the goods move from Shenzhen to Hong Kong from where these are dispatched to India. Hence, no response has been filed on behalf of *** or freight forwarding agencies involved in the movement of goods.
- ix. ATP, Taiwan and ADATA, China are the producers whose normal values are required to be determined by the Authority. Export price will need to be determined by the Authority for Sony Electronics Asia Pacific (SEAP), Singapore.
- x. Ownership of the subject goods exported to India is initially with the producer viz. ATP and ADATA, respectively, and then moves on to the Sony entities as per the invoicing route as reflected in our questionnaire response.
- xi. The practice of invoicing the goods in question via a particular route is a trade practice followed by Sony entities since long. This is so because the various entities involved in the operation respectively has different functions, e.g. overseeing procurement functions, supervising third party operations, global business planning, overseeing sales of Asia Pacific Regions. No other entities except these and the named producers are involved in the sales transactions to India. Further, these transactions are on arm's length basis.

Examination by the Authority

62. From the EQ response and subsequent information filed by the Sony group companies, the Authority notes the following:

- i. None of the respondent Sony group companies are situated in the subject countries.
- ii. None of the respondent Sony group companies are producer of subject goods.
- iii. The subject goods claimed to have been exported to India have originated from ATP Electronics, Taiwan and ADATA Technology Corporation Ltd, Taiwan.
- iv. The subject goods claimed to have been exported to India have also originated from ATP Hong Kong and Moduslink, China.
- v. In case of goods procured from ATP Electronics, Taiwan channel, as already noted by the Authority, the goods are actually produced by ***, Taiwan, a related company of ATP Electronics, Taiwan who has not filed EQ response in the present investigation. In view of non-filing of EQ response by the producer of the subject goods, the normal value cannot be determined as representative of the actual producer and export price cannot be determined as representative of the exporters involved in the entire value chain.
- vi. Subject goods procured from ATP Hong Kong and Moduslink, China, have also been exported by Sony group companies to India. ATP Hong Kong has not filed EQ response in the present investigation. *** China, through whom ATP Electronics, Taiwan exported ***% of its exports of subject goods to India during the POI, has not filed EQ response in the present investigation. In view of this position, complete value chain is also absent in respect of goods procured from ATP Hong Kong and Moduslink, China, which are originating from ***, Taiwan, related company of ATP Electronics, Taiwan and export price determined without the entire value chain cannot be representative of the exports made to India.

- vii. In case of goods procured from ADATA, Taiwan channel, the subject goods are originally produced by ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR and Carry Technology Co Ltd, Taipei, Taiwan. Carry Technology Co Ltd, Taipei, Taiwan, who is involved in the processing of the subject goods through a contract with ADATA Technology Corporation Ltd, Taiwan has not filed EQ response in the present investigation. In the absence of EQ response by Carry Technology Co Ltd, Taipei, Taiwan, normal value and export price and therefore dumping margin cannot be determined as representative of the entire value chain.

63. In view of the above position, in the absence of complete value chain due to non-filing of EQ response by producers/exporters involved in the production/export of the subject goods the Authority does not accept the EQ responses filed by the Sony companies for determination of individual margins.

E. Kaifa Technology Hong Kong Ltd, Hong Kong, Kingston Digital International Ltd, Ireland (KDIL), Kingston Technology Far East Corporation, Taiwan (KTFE) and Shenzhen Kaifa Micro Electronics Co Ltd, China (SKMEC).

E.1 Kingston Technology Far East Corporation (KTFE), Taiwan

64. The following are stated in the EQR and subsequent information filed by Kingston Technology Far East Corporation (KTFE), Taiwan:

- i. KTFE, Taiwan is a ***% subsidiary of Kingston Taiwan Corporate UA, Taiwan, owned by Kingston Technology Corporation, USA.
- ii. KTFE, Taiwan is therefore related to Kingston Digital International Ltd, Ireland (KDIL).
- iii. KTFE, Taiwan is a producer of subject goods having its plant at Hsia-Chu, Taiwan.
- iv. Apart from KTFE, Taiwan, Kingston Digital International Ltd (KDIL), Ireland is also involved in the subject goods.
- v. KTFE, Taiwan is a contract manufacturer of subject goods for KDIL, Ireland.
- vi. KTFE, Taiwan undertakes manufacturing activity of subject goods on behalf of KDIL, Ireland in lieu of raw materials/components supplied by KDIL, Ireland.
- vii. KDIL, Ireland is the owner of the subject goods.

- viii. KTFE provides manufacturing, packaging and logistic services to KDIL, Ireland for a servicing fee.
- ix. No costing information has been provided since all the raw materials are supplied by KDIL, Ireland and KTFE, Taiwan merely does a job work for a fee.
- x. KTFE is not the owner of subject goods. It merely does a job work for producing the subject goods and ships the goods to India under the instruction of KDIL, Ireland.
- xi. KTFE, Taiwan is not involved in the sale and distribution of the subject goods.
- xii. KTFE Taiwan is the only manufacturer engaged by KDIL, Ireland for manufacturing of the subject goods.
- xiii. All transactions between KTFE and KDIL are at arm's length basis.
- xiv. KDIL, Ireland is the principal under whose instructions subject goods are manufactured by KTFE, Taiwan and sold to India. Therefore, Authority is required to determine the normal value of KDIL, Ireland.
- xv. Since KDIL, Ireland is the owner of subject goods exporting from Taiwan the Authority is required to determine the export price for KDIL, Ireland.

65. In response to the queries raised by the Authority, the following have been informed by KTFE, Taiwan:

- i. KTFE and KDIL are related companies, both owned by Kingston Technology Corporation, USA.
- ii. KTFE provides manufacturing, packaging and logistics services to Kingston Digital International Limited, Ireland (KDIL). KDIL is the only Kingston entity with whom KTFE transacts.
- iii. As KDIL, Ireland is the owner of the goods which is merely receiving manufacturing services from KTFE, KDIL, Ireland has to be considered as the producer of the goods and its normal value has to be determined by the Authority.
- iv. KDIL, Ireland is also required to be treated as the exporter for the purposes of the present investigation since the exports are undertaken by KTFE, Taiwan under instruction from KDIL, Ireland.
- v. All the raw materials for the manufacture of the products under investigation were provided by KDIL, hence KTFE is not required to provide the production and costing details.

- vi. KTFE, Taiwan is not involved in the sale and distribution of the products but is merely a service provider, hence it is can't provide any sale / distribution related information.

E.2 Kingston Digital International Ltd (KDIL), Ireland

66. The following are stated in the EQ response and subsequent information filed by Kingston Digital International Ltd (KDIL), Ireland:

- i. KDIL, Ireland is a wholly owned subsidiary of ***, Ireland, ultimately owned by ***, USA. KDIL, Ireland is therefore related to KTFE, Taiwan.
 - ii. KDIL, Ireland engaged KTFE, Taiwan and Kaifa Technology, Hong Kong (unrelated) in the manufacturing of the subject goods.
 - iii. Kaifa Technology, Hong Kong provides manufacturing support to KTFE, Taiwan through its related company Shenzhen Kaifa Micro Electronics Company Ltd, China PR.
 - iv. Raw Materials are supplied by KDIL, Ireland to KTFE, Taiwan through Kaifa Honk Kong and Kaifa MEC, Shenzhen, China PR.
 - v. Finished goods flow from KTFE, Taiwan to KDIL, Ireland and from Kaifa Shenzhen China to KDIL.
- vi. In response to the queries raised by the Authority, the following have been informed:
- i. KDIL, Ireland is the principal entity responsible for the production and export of USB flash drives into India.
 - ii. KDIL has executed contract manufacturing agreements with Kingston Technology Far East Corporation, a related company in Taiwan, and Kaifa Technology (Hong Kong) Limited (Kaifa HK), an unrelated company in Hong Kong.
 - iii. Kaifa HK has been engaged as a contract manufacturer by KDIL, Ireland for manufacture of its products. Kaifa HK, has further sub-contracted the manufacture of USB flash drives to its related company, Shenzhen Kaifa Micro Electronics Company Limited (Kaifa MEC), China PR.

- iv. KDIL places periodic orders on Kaifa HK for manufacture of its products. The orders are thereafter placed on Kaifa MEC by Kaifa HK, which undertakes the actual manufacturing and shipping of the goods.
- v. While KDIL has the contractual arrangement with Kaifa HK for providing contract manufacturing services to KDIL, the actual manufacture of the flash drives is undertaken by Kaifa MEC.
- vi. KDIL has executed a USB Assembly Agreement with Kaifa HK which provides the commercial and operational framework for the contract manufacturing services. Further, KDIL is not privy to the contractual arrangement between Kaifa HK and Kaifa MEC and accordingly cannot provide any further details in this regard.
- vii. KDIL, Ireland is the owner of the USB flash drives and determines their prices. The goods exported to India are under the ownership of KDIL, hence KDIL is the exporter whose export price needs to be determined.

E.3 Kaifa Technology Hong Kong Ltd, Hong Kong & Shenzhen Kaifa Micro Electronics Co Ltd, China (SKMEC)

67. The following are stated in the EQ response and subsequent information filed by Kaifa Technology Hong Kong Ltd, Hong Kong and Shenzhen Kaifa Technology Co Ltd, China PR :

- i. Kaifa Technology Hong Kong Ltd, Hong Kong and Shenzhen Kaifa Technology Co Ltd, China PR are related companies.
- ii. Kaifa Technology Hong Kong Ltd is a Hong Kong based company owned by Shenzhen Kaifa Technology Co Ltd, China PR.
- iii. Kaifa Technology Hong Kong Ltd has contractual arrangement with Kingston Digital International Ltd (KDIL), Ireland for manufacturing of the product under consideration.
- iv. Kaifa Technology Hong Kong Ltd in turn subcontracts the manufacturing of the product under consideration to Shenzhen Kaifa Technology Co Ltd, China PR.
- v. Raw materials are supplied by KDIL, Ireland to Kaifa Technology Hong Kong Ltd, which in turn supplies the said raw materials to Shenzhen Kaifa Technology Co Ltd, China PR for manufacturing of the PUC.

- vi. Shenzhen Kaifa Technology Co Ltd, China PR ships the product under consideration under instruction from KDIL, Ireland.

68. In response to the queries raised by the Authority, the following have been informed by Kaifa Technology Hong Kong Ltd, Hong Kong and Shenzhen Kaifa Technology Co Ltd, China PR :

- i. Kaifa HK is a contract manufacturer for Kingston Digital International Limited. Ireland. Based on the orders received from KDIL, Kaifa HK further sub-contracts the manufacturing to Shenzhen Kaifa Micro Electronic Company Limited, China PR.
- ii. Kaifa HK consigns all materials provided by KDIL to Kaifa MEC for manufacture of the products under investigation.
- iii. Subsequent to the manufacture of the products under investigation, Kaifa MEC ships the finished products under instructions from KDIL.
- iv. Kaifa HK is not the producer of the goods and is merely a contractor which in turn sub-contracts the manufacturing services to Kaifa MEC, which provides the manufacturing services.
- v. KDIL remains the owner of the goods (both raw materials & finished goods) at all times, for the present purposes of the investigation KDIL should be treated as the producer.
- vi. Shenzhen Kaifa is only a holding company which has no involvement with the manufacture and export of USB flash drives to India during the POI. As Shenzhen Kaifa is not an interested party, hence it is not required to submit the Exporter's Questionnaire.
- vii. The contractual arrangement between Kaifa HK and Kaifa MEC is not in a written form and has been based on the customary practice and dealings in the past.
- viii. Kaifa HK is a contractor for KDIL which sub-contract the manufacturing services to Kaifa MEC. As all the material required in the production process is owned and supplied free of cost by KDIL, KDIL should be treated as the owner and producer of the goods, exported to India during the POI.
- ix. Kaifa HK customarily provides ***% of the service income to Kaifa MEC as sub-contracting charges.

- x. Kaifa HK also humbly submits that KDIL should be treated as the exporter, since the export price for the product manufactured is determined by KDIL and the export documents submitted by Kaifa MEC provide the same.
- xi. Kaifa MEC, China PR is a sub-contractor for Kaifa Technology (Hong Kong) Limited which provides the actual manufacturing services to Kingston Digital International Limited.

Examination by the Authority

69. From the EQ response and subsequent information filed by Kaifa Technology Hong Kong Ltd, Hong Kong, Kingston Digital International Ltd, Ireland (KDIL), Kingston Technology Far East Corporation, Taiwan (KTFE) and Shenzhen Kaifa Micro Electronics Co Ltd, China (SKMEC) the Authority notes the following:

- i. Ireland is not a subject country in the present investigation. Therefore, Kingston Digital International Ltd, Ireland has no locus standi in the present investigation.
- ii. Required information regarding the production, costing and sales of the subject goods have not been furnished.
- iii. Moreover, the information regarding the flow of goods from the producer in Taiwan to India and invoicing by the Producer in Taiwan to Ireland for exports to India are also not made available.
- iv. The respondent companies have requested the Authority to determine the normal value of KDIL, Ireland since they are the principal under whose instructions subject goods are manufactured by KTFE, Taiwan and sold to India
- v. The respondent companies have further requested that since KDIL, Ireland is the owner of subject goods exporting from Taiwan and China PR to India, the Authority is required to determine the export price for KDIL, Ireland.

70. The Authority notes that Ireland not being a subject country, it is not permissible under the Anti-dumping Rules to determine normal value and therefore dumping margin for Ireland. In view of the above position, the Authority does not accept the EQ responses filed by Kingston Technology Far East Corporation, Taiwan (KTFE), Kingston Digital International Ltd, Ireland (KDIL), Kaifa Technology Hong Kong Ltd, Hong Kong and Shenzhen Kaifa

Micro Electronics Co Ltd, China PR (SKMEC) for determination of individual margins.

F. PNY Technologies Asia Pacific, Taiwan and PNY Technologies Inc, Shenzhen Representative Office, China.

71. PNY Technologies Asia Pacific, Taiwan and PNY Technologies Inc, Shenzhen Representative Office, China are related companies situated in Taiwan and China PR respectively. As stated in the EQ response, PNY Technologies Inc, Shenzhen Representative Office, China PR is not involved in either production or sale of the subject goods. PNY Technologies Asia Pacific, Taiwan is a producer and exporter of subject goods having a plant in Taiwan.
72. As further stated in the EQ responses and subsequent information furnished by the respondent companies, PNY Technologies Inc, USA, the ultimate owner of PNY group companies, supplies key inputs of the subject goods to PNY Technologies Asia Pacific, Taiwan. PNY Technologies Asia Pacific, Taiwan manufactures and supplies the subject goods on behalf of Hewlett Packard (HP) through a *** agreement and on payment of ***. As stated by PNY Technologies Asia Pacific, Taiwan, HP has no role in the production and sale including costing and pricing of the subject goods except setting certain quality norms for HP brand USB. PNY Technologies Asia Pacific, Taiwan also exports the subject goods in PNY brand to India.
73. PNY Technologies Asia Pacific, Taiwan has another *** agreement with Speeder Electronics Co Ltd for processing Speeder housing units for the subject goods. As stated by PNY Technologies Asia Pacific, Taiwan, Speeder has no role to play in the production, sale, costing and pricing of the subject goods.
74. As per the information subsequently furnished by PNY Technologies Asia Pacific, Taiwan, the Company has only two customers in India namely *** and ***. The Company has claimed to have exported ***pcs of subject goods to India during the POI, out of which ***pcs have been exported to *** and ***pcs have been exported to ***. While the exports made to *** constituting ***% of the total exports have been made directly by the Company, the balance ***% of the exports have been made to *** through ***, Hong Kong, who have not filed EQ response in the present investigation.
75. In response to the queries raised by the Authority, the following have been informed by PNY Technologies Asia Pacific, Taiwan:

- i. PNY Technologies, Inc. Taiwan is a ***% subsidiary of PNY Inc. which was subsequently liquidated.
- ii. PNY Taiwan procures certain components from other suppliers including its parent company PNY Inc.
- iii. PNY Taiwan undertakes sale of its products both in Taiwan and in India. In the home market – Chinese Taipei, PNY Taiwan channels of distribution include both distributors and original equipment manufacturers. The sale of the subject goods exported to India is carried out through two distributors, namely *** and ***.
- iv. PNY Taiwan, a subsidiary of PNY Inc, Taiwan (subsequently liquidated), is a manufacturer/producer of USB flash drives. PNY manufactures USB flash drives which involve assembling SIP, housing. To manufacture the PUC, PNY Taiwan procures certain components from other suppliers including its parent company PNY Inc.
- v. PNY Taiwan undertakes sale of its products both in Taiwan and in India. In the home market – Chinese Taipei, PNY Taiwan channels of distribution include both distributors and original equipment manufacturers. The sale of the subject goods exported to India is carried out through two distributors, namely ***and ***.
- vi. Hewlett-Packard Company (HP) is not a related company. HP plays no role in the production and sale including costing and pricing of USB flash drives manufactured by PNY Taiwan. However, HP prescribes certain quality norms for the sale of HP branded USB flash drives.
- vii. PNY Taiwan, HP and PNY Inc. have entered into a *** agreement. Since PNY Taiwan is not related to HP, it is not able to specify the reasons why HP may not have filed its response.

Examination by the Authority

76. The Authority notes that in the absence of exporter's questionnaire response by ***, Hong Kong, the complete value chain in respect of the exports of subject goods made by PNY Technologies Asia Pacific, Taiwan cannot be established and the export price claimed by PNY Taiwan cannot be treated as representative of the Company. In view of the above position, the Authority does not accept the EQ response filed by PNY Technologies Asia Pacific, Taiwan and PNY Technologies Inc, Shenzhen Representative Office, China

and does not determine individual margins for PNY Technologies Asia Pacific, Taiwan.

G. Transcend Information (Shanghai) Co Ltd, China PR, Transcend Trading (Shanghai) Co Ltd, China PR and Transcend Information Inc, Taiwan.

77. Transcend Information (Shanghai) Co Ltd, China PR, Transcend Trading (Shanghai) Co Ltd, China PR and Transcend Information Inc, Taiwan are related parties.

Transcend Information (Shanghai) Co Ltd, China PR

78. The following are stated in the EQ response and subsequent information filed by Transcend Information (Shanghai) Co Ltd, China PR:

- i. Transcend Information (Shanghai) Co Ltd, China PR is wholly owned by Memhiro Pte Singapore, which is 100% owned by Transend Information, Taiwan.
- ii. Transcend Information (Shanghai) Co Ltd, China PR is a producer of subject goods in China. It has only one plant in China
- iii. Required raw materials for the subject goods are supplied by Transend Information, Taiwan.
- iv. For exports to India, Transcend Information (Shanghai) Co Ltd, China PR has only one channel of distribution. All Indian sales are made through Transend Information, Taiwan.
- v. Transcend SH only sells to the distributor in India market.
- vi. Transend Information, Taiwan handles the India sales for Transcend Information (Shanghai) Co Ltd, China PR.
- vii. All domestic sales are sold by Transcend Information (Shanghai) Co Ltd, China PR during the POI.

79. The following are stated in the EQ response and subsequent information filed by Transend Information, Taiwan:

- i. Transend Information, Taiwan is the parent company of Transcend Information (Shanghai) Co Ltd, China PR.
- ii. Transend Information, Taiwan is a producer of subject goods in Taiwan. It has only one plant in Taiwan.
- iii. During the POI, it exported to India subject goods manufactured by itself and also by Transcend Information (Shanghai) Co Ltd, China.
- iv. For exports to India, the Company has two channels of distribution – distributors and resellers.
- v. The Company has several channels of distribution in the home market.

- vi. C Tech Corporation is another Taiwan company related and involved in the production/sale of subject goods, but was dissolved in 2013. C. Tech Corporation, Taiwan was involved in resale of subject goods in Taiwan.
- vii. Transend Information, Taiwan also exported the subject goods to Transtech Trading (Shanghai) Co Ltd, China PR for sales in China PR.
- viii. C. Tech Corporation, Taiwan and Transtech Trading (Shanghai) Co Ltd, China PR are not involved in the export of subject goods to India.

Transcend Trading (Shanghai) Co Ltd, China PR

80. The following are stated in the EQ response and subsequent information filed by Transcend Trading (Shanghai) Co Ltd, China PR:

- i. Transcend Trading (Shanghai) Co Ltd, China PR has no export of subject goods to India during the POI.
- ii. The Company is involved only in domestic sales in China.

81. In response to the queries raised by the Authority, the following have been informed by the Transcend group companies in China and Taiwan:

- i. Transcend Information (Shanghai) Co., Ltd., China PR is 100% owned by Transcend Information Inc, Taiwan.
- ii. No export license needed for foreign market sales.
- iii. No other party involved in the production and export of the subject goods to India during the POI except above mentioned.
- iv. Transcend SH is the exporter of the subject goods while the goods are shipped directly from China to India. However, Transcend TW acts like a trader and re-invoices India sales back-to-back.
- v. Transcend SH is the owner of the subject goods exported to India.
- vi. Transcend Taiwan handles the export sales for Transcend China including its own products. Transcend, Taiwan purchases the finished goods from Transcend China PR for resale in domestic market sales in Taiwan.

Examination by the Authority

82. From the information furnished by the Company, the Authority notes that during the POI Transcend Information (Shanghai) Co Ltd, China produced ***Pcs of subject goods, whereas Transcend Information Inc, Taiwan produced only *** Pcs constituting about ***% of the production of Transcend Information (Shanghai) Co Ltd, China. During the POI, Transcend Information (Shanghai) Co Ltd, China exported ***Pcs of product under consideration to Transcend Information Inc, Taiwan for sales in domestic market of Taiwan and exports to countries including India.
83. In the EQ response, Transcend Information (Shanghai) Co Ltd, China declared that the Company has only one channel of distribution as regards sales to India during the POI. It was further declared that Transcend Information, Taiwan handles the India sales for Transcend Information (Shanghai) Co Ltd, China. Subsequently, in response to queries raised by the Authority, it was informed that subject goods are also being exported to India through its related company in Taiwan namely Transcend Information, Taiwan. On being questioned about the reasons for adopting such a circuitous channel of export to India by involving additional expenditure when the Company is as such involved in direct physical export of subject goods to India, it was explained that Transcend Information, Taiwan acts as a distribution hub for the group and the additional cost of transporting the goods to Taiwan physically is negligible. However, from the information furnished by the Company, it is difficult to understand why a Chinese producer, who has got an established channel of direct export to India and invoicing through its related Taiwanese company would prefer to physically export the subject goods to its related party in Taiwan for exporting to India by incurring logistic inconvenience, additional transportation, cargo handling charges, bank charges etc.
84. Although it was declared in the EQ responses that no other party other than the related Transcend companies are involved in the production and export of the subject goods to India during the POI, from the information provided in the EQ response it was noted by the Authority that during the POI, Transcend China and Transcend, Taiwan also exported significant volume of subject goods through ***, Singapore and ***, Singapore, who have not cooperated and filed EQ response in the present investigation. This kind of sales to India represents a third channel, which was not declared in the EQ response filed by the respondent companies. Since during the POI the entire exports of Transcend Information (Shanghai) Co Ltd, China PR to India were invoiced through Transcend Information, Taiwan and a substantial volume of the subject

goods produced by Transcend Information (Shanghai) Co Ltd, China PR was exported by Transend Information, Taiwan to India along with the subject goods produced by itself, the entire exports virtually becomes the exports of Transend Information, Taiwan. From the information furnished by Transcend, *** pcs of subject goods were exported to India through ***, Singapore and *** pcs of subject goods were exported to India through ***, Singapore, together constituting about ***% of the total exports made by Transcend China and Transcend Taiwan to India during the POI. This position contradicts the declaration of the companies in the EQ responses that no other party is involved in the production and export of the subject goods to India during the POI.

85. The Authority notes that in the absence of exporter's questionnaire response by ***, Singapore and ***, Singapore, through whom significant volumes of subject goods have been channelized by the Transcend group companies in China PR and Taiwan to India during the POI, the complete value chain is absent and the export price claimed by Transcend Information (Shanghai) Co Ltd, China PR and Transend Information, Taiwan cannot be treated as representative of these companies. In view of the above position, the Authority does not accept the EQ response filed by Transcend Information (Shanghai) Co Ltd, China PR and Transend Information, Taiwan and does not determine individual margins for the said companies.

F. MARKET ECONOMY TREATMENT. NORMAL VALUE. EXPORT PRICE AND DUMPING MARGIN

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

86. The following submissions are by the producers/exporters/importers/other interested parties:
- i. The method of determination of the normal value by the Applicant in relation to China, Korea and Taiwan is not as per law. As per the law, the normal value may be determined by construction or be based on the export price to an appropriate third country only when (i) there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country; or (ii) there is a low volume of sales of the like product in the domestic market of the exporting country; or (iii) because of the particular market situation. In the present investigation, it is not the case that there are no sales of UFDs in Korea and Taiwan.
 - ii. The Applicant has constructed the normal value for Taiwan and Korea in view of the fact that no published information is available. But, there is nothing in the law that permits the Applicant to proceed with construction

of the normal value for countries such as Korea and Taiwan, which are market economies.

- iii. Major inputs that go into manufacturing the PUC are imported. The costs for such importation should be adjusted while determining normal value.
- iv. Since Moser Baer started its production in 2009, its cost would be higher than the well-established producers of subject goods in the subject countries. Therefore, its cost of production should not be the basis for construction of normal value.
- v. India is not an appropriate surrogate country for China PR for purposes of normal value construction due to significantly higher costs of production of the like product in India and the level of development. Rather, Taiwan should be treated as surrogate country for Chinese producers.
- vi. Since the prices had fluctuated significantly, determination of normal value on weighted average basis would be fallacious.
- vii. Due to flawed determination of normal values, the dumping margin determined for the subject countries based on the aforesaid normal values is also erroneous.
- viii. Absence of customs duty and the imposition of anti-dumping duty should not be co-related. Nil customs duty indicates that tariff barriers should not impede trade in the development of next-generation information technology infrastructure.
- ix. Transcend Information (Shanghai)., Ltd., and Transtech Trading (Shanghai) Co., Ltd., China PR, related Chinese Companies, are foreign-owned enterprises without any government interference and should be treated as market economy enterprises. Their normal value should be based on domestic price and cost data of the producer and not based on Indian producers. In case Market Economy status is not granted by DGAD to these Chinese companies, Taiwan should be adopted as surrogate country to work out Normal Value for these two companies.
- x. SanDisk operates under market economy conditions and the same is evident from the cost presented by SanDisk. Electricity costs, labor costs, investment and procurement of raw materials clearly indicate that operations of SanDisk are not affected by non-market economy conditions. Costs presented by SanDisk in response to the questionnaires prescribed by DGAD are not affected by the non-market economy conditions alleged to be prevailing in China. There is no interference by

the Chinese government or its agencies or officials in the operations of SanDisk group companies that operate in China PR. Subject goods have been sold in the domestic market to different buyers at market driven prices. This is evident from the fluctuations in rates from time to time. This shows that the prices are market driven and not controlled by the State.

- xi. Petitioner's statement regarding suppression of PNY's manufacturing and export value chains, is completely misplaced and misconceived. PNY has provided complete and accurate details of its manufacturing and export value chain in their response to the Exporters' Questionnaire.
- xii. Constant change in the import data by the domestic industry makes the veracity of the said data doubtful. It has changed the volume of imports without explaining the methodology for computation of such data. Under such circumstances, the dumping margin calculated based on such data cannot be relied upon and must be rejected.
- xiii. It is imperative to take into account data transfer speeds (USB2.0 and USB3.0) as well as storage capacity while making price comparisons.

Submissions made by Domestic Industry

87. The following are the submissions made by the domestic industry concerning market economy, export price, normal value and dumping margin:

- i. China is a non-market economy. No country has granted market economy country status to China after following elaborate evaluation parameters. China has been treated non-market economy by European Commission and United States in the past three years. European Union and United States are members of World Trade Organization. In India also, the Designated Authority has treated China as non-market economy.
- ii. Unless the responding Chinese exporters conform to market economy standards, the Designated Authority is required to determine normal value in accordance with Para 7 of Annexure-I to the Rules.
- iii. A number of interested parties have contended that determination of normal value on the basis of construction method is impermissible under the law, as the rules provide for a hierarchy. The petitioner clearly contended that the information with regard to domestic prices is not publically available. Such being the case, petitioner was justified in adopting other basis for determination of normal value.

- iv. There is no published information available of the prices of the product in third countries and the petitioner does not have the information required to construct normal value in a third country. Hence, it is appropriate for the Designated Authority to adopt a constructed normal value for China PR.
- v. The petitioner has adopted best available information to determine cost of production in subject countries. The only obligation on the petitioner in this regard is to adopt publically available information.
- vi. Scale of operations of the domestic industry is not so small that the same will make a significant difference to the cost for purchase of various inputs as argued by the other interested parties.
- vii. There is no basis for the assumption that cost of production is higher in the current period. The fact that the domestic industry commenced production in 2009 does not imply that the cost of the domestic industry will be abnormally higher. Its operations were fully stabilized at the time of period of investigation.
- viii. Almost all responding exporters have claimed Market Economy Status in the present case. The responding exporters have developed a complex web of operations and it would almost be impossible to determine individual normal value. Such being the case, the question of Market Economy Status does not arise.
- ix. The Designated Authority rejected complete questionnaire response of Chinese company in the matter of ceramic tiles, relevant extracts of which are reproduced below, on the grounds that "group as a whole" has not filed questionnaire response. It would, thus, be seen that the Designated Authority denied Market Economy Status to a Chinese company solely on the ground that "group as a whole" has not filed MET claim.
- x. After the determination of the fact that China is a non-market economy, the Designated Authority would follow Para 7 for the determination of normal value. According to these Rules, the normal value in China can be determined on any of the following basis:
 - a) The price in a market economy third country,
 - b) Constructed value in a market economy third country,
 - c) The price from such a third country to other country, including India.
 - d) The price actually paid in India, adjusted to include a reasonable profit margin.

- e) The price actually payable in India, adjusted to include a reasonable profit margin.
- xi. In the present case, 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 normal value in the subject country can thus be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. Normal Value in China has been determined on the basis of cost of production in India, duly adjusted.
- xii. Due to the frequent fluctuation of the prices and no published information is available as to prices of the product under consideration in Taiwan and Korea, it is appropriate to construct normal value for these countries
- xiii. The petitioner has relied upon the Cybex data at the application stage. The export price has been calculated at the CIF level. Separate dumping margin has been determined in respect of products having different storage capacities.
- xiv. The methodology for determination of normal value and the calculations of normal value contained in the petition are consistent with the practice accepted by the Directorate in the past.
- xv. According to the WTO Agreement on Anti Dumping and the Indian Rules, comparison of normal value and export price should be done at same level of trade. Therefore, the export price has been adjusted for the following expenses, which may have been incurred by the exporter for exporting the material to India.
- i. Ocean Freight
 - ii. Marine Insurance
 - iii. Port Expenses
 - iv. Inland Freight
 - v. Bank Charges
 - vi. Commission.
- xvi. Considering the normal value and the export price determined as discussed above, dumping margin has been calculated. It is submitted that the dumping margin is substantial despite existing duties. The volumes of imports of subject goods from subject countries increased in absolute terms in the POI when compared with the base year. The dumping margins are not only above de-minimis but also substantial.

- xvii. Petitioner reiterates that the present case is a fit case to invoke single economic entity concept and determine one normal value for all producers from Taiwan and thereafter individual dumping margin based on individual export prices.
- xviii. Almost all responding exporters have claimed no dumping. However it is clearly establish that (a) the questionnaire responses are grossly incomplete (b) all legal entities involved in production and sale of the product under consideration from the stage of conceptualizing the product till the settlements of warrantees and after sales services are concerned are not before the Designated Authority, (c) the responding companies have not established how they justify their claim of market economy status.
- xix. The petitioner has not made adjustments for the warrantees that have been extended by the exporters Warranty should be factored in the price comparison.
- xx. The petitioner has determined normal value, export price and dumping margin separately for each capacity. Weighted average dumping margin has been determined thereafter.
- xxi. While prevailing sample prices could raise an element of uncertainties, adoption of cost of production for determination of normal value leads to adoption of accurate information and avoids all kinds of uncertainties.
- xxii. Costs of the exporter are relevant only if the sales price is below cost of production. If the exporter is selling at discriminatory prices between the two markets, the fact that exporter is having lower cost is entirely immaterial. The relevant consideration is whether exporters are dumping in India or not.
- xxiii. The fact that the domestic industry is importing raw materials is not at all relevant for the purpose of establishing dumping and consequent injury to domestic industry. It is only when such domestic price is below cost of production that the cost of production of the exporter becomes relevant. Otherwise, normal value is determined based on domestic selling price.
- xxiv. The petitioner considered prices of two major capacities of the product which have been exported from the subject countries and the prices of the different suppliers over the period. There is no consistent pattern, or consistent decline over the period. Mere difference in price on month by month basis is insufficient to do month wise comparison.

- xxv. India should be treated as an appropriate surrogate country for the Chinese producers. It is general practice of the authorities not to treat other country under investigation as a surrogate country, as was the position taken by the EU Commission in PTFE from Russia and China.
- xxvi. The Authority determines CNV by adopting the conversion cost as per the NIP workings.
- xxvii. As Guatemala Grey Portland Cement from Mexico (WTO Panel Report), if the information supplied in the application is all that is reasonably available to the applicant as required by Article 5.2, the investigating authority is justified in initiating the investigation.
- xxviii. With respect to determining cost of production in Taiwan, the only obligation on the petitioner in this regard is to adopt publically available information. The questionnaire responses filed by responding exporters make it evident that all exporters treat their information with regard to cost of production as extremely sensitive business information.
- xxix. While prices are determined by the buyer and sellers, there are publically available documents which provide information on selling price in a large number of products. For instance, prices of Phenol, Acetone, Caustic Soda are routinely published by the trade journals. If that was the situation in the present case, the domestic industry could have provided relevant information to the Designated Authority. However, in the instant case, no such information is publically available.
- xxx. Petitioner has no knowledge about prices prevailing in domestic market of the exporting countries. PNY has not given any document to show that the said prices are in public domain. The statement made by petitioner with respect to price fluctuation is based on its experience as a producer and seller of the product in India and in global market.
- xxxi. The petition clearly states that information available on the internet is only with regard to current prices and it would not be appropriate to adopt the same for the prices prevailing in period of investigation.
- xxxii. As regards 'relevant period', it is well understood that the normal value and export price should pertain to the same period and should be for the period of investigation proposed in the petition.
- xxxiii. The Designated Authority has routinely determined export price not only for the purpose of initiation but also for the purpose of determination on the basis of imports information compiled by secondary sources.

- xxxiv. The mere fact that Cybex data does not show increase in price with the increase in storage capacity does not imply that the data is unreliable. It only implies that the exporters have resorted to irrational pricing.
- xxxv. The data does not show that there is significant and consistent price difference with difference in storage capacity. In fact, import data does not show price difference between USB 2.0 and 3.0. Further, in the matter of Colour Picture Tubes, the Designated Authority recognized that the domestic industry was not producing slim picture tubes and clubbed slim and other picture tubes of same size for determination of dumping margin, injury margin and reference price.
- xxxvi. The petitioner has determined dumping margin for each product type and thereafter determined weighted average dumping margin for the product under consideration. It is indeed quite surprising that the exporter has claimed entirety of its information as confidential and has demanded such information in the petition.

Examination of the Authority

88. As already recorded in this finding, the Authority notes that many respondent companies have claimed to be producers of subject goods without having the required production facilities. Many respondent companies also claimed producer status without belonging to the subject countries. Some of the respondent companies situated in non-subject countries and even without having required production facilities have also requested the Authority to determine normal value on the basis of their data. The Authority further notes that the flow of the subject goods in respect of all respondent companies is circuitous and does not represent complete value chain. In view of the above position, as already explained in this finding in a much elaborate manner, the Authority does not grant individual margins to any of the respondent producers/exporters from the subject countries. As already explained in this finding, since under these circumstances, since granting of individual normal value to the market economy producers/exporters is irrelevant, the Authority does not grant individual normal value to any of the respondent market economy producers/exporters. Nevertheless, the specific submissions made by the interested parties in this regard are examined below:

- i. As regards the methodology of determination of the normal value, the Authority notes that the methodology adopted for determination of normal value in respect of the subject countries is as per the law laid down for the purpose and has been well explained in this finding.
- ii. As regards the contention that Moser Baer's cost of production should not be taken for construction of normal value since the company is

fairly new and its cost of production is bound to be higher, the Authority notes that none of the respondent producers/exporters from the subject countries have been found to be eligible for determination of individual margins. As a result, the Authority has determined the normal value in respect of the subject countries on the basis of best available facts as per the Rules.

- iii. As regards the submission that Taiwan should be treated as surrogate country for Chinese producers, the Authority notes that the proposition is unacceptable considering the level of development of these countries.
- iv. As regards the submission that since the prices of the subject goods had fluctuated significantly, determination of normal value on weighted average basis would be fallacious; the Authority notes the submission is unsubstantiated. Moreover, when there is wide variation in the product under consideration in terms of GB capacity, determination of normal value on weighted average basis is considered to be appropriate.
- v. As regards the submission that constant change in the import data by the domestic industry makes the veracity of the said data doubtful, the Authority notes that the imports data from the DGCI&SA source has been relied upon in this finding.

G. Market Economy Treatment

89. The Authority notes that the following Chinese producers/exporters filed Market Economy Treatment (MET) questionnaire response and claimed market economy treatment:

- i. SanDisk Semiconductor (Shanghai) Co Ltd, China PR.
- ii. SanDisk Trading (Shanghai) Co Ltd, China PR.
- iii. UTAC Dongguan Ltd, China PR.
- iv. STATS ChipPAC Shanghai Co Ltd, Shanghai, China PR.
- v. Shenzhen Kaifa Micro Electronics Co Ltd, China PR.
- vi. Transcend Information (Shanghai) Co Ltd, China PR.
- vii. Transcend Trading (Shanghai) Co Ltd, China PR.

90. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. As per Paragraph 8 of Annexure I of the Anti-dumping Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the

basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 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.

91. The Authority notes that consequent upon the initiation notice issued by the Authority, the aforesaid Chinese producers/exporters submitted questionnaire response including the market economy questionnaire response and sought to rebut the non-market economy presumption. The Authority further notes that since none of the EQ responses filed by the Chinese companies have been accepted by the Authority for determination of individual margins, the market economy treatment claimed by the respondent Chinese companies in the present investigation is irrelevant. In view of the above position and as already recorded in this finding, the Authority does not grant market economy treatment to any of the respondent Chinese companies in the present investigation.

H. Determination of Normal Value

Determination of Normal Value for producers and exporters in China PR

92. Para 7 of Annexure I of the AD Rules provides that "In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, *including India* or where it is not possible, or on any other reasonable basis, including the price actually

paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated Authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”

93. The Authority indicated in the initiation notification that the petitioner has claimed the constructed normal value in case of China PR on the basis of cost of production in India duly adjusted including adjustment on selling, general & administrative expenses and profit, in terms of Para 7 of Annexure I to the Rules. However, none of the interested parties, including the applicants and Chinese producers has placed any material fact before the Authority to select an appropriate market economy third country for the purpose.

94. The Authority notes that due to facts recorded in this finding, the EQ response filed by none of the Chinese companies have been found to be eligible for grant of individual margins. Under the circumstances, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules to the above named Chinese companies and the Authority has to proceed in accordance with Para 7 of Annexure - I to the Rules. Paragraph-7 of the Annexure-1 to the Anti-dumping Rules provides as follows:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin”.

95. According to these Rules, the normal value in China 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.

96. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies have made any claim with regard to an appropriate market economy third country. Therefore, the Authority determines the Normal value for China PR on available facts basis in terms of Para 7 of Annexure 1 to the Anti-dumping Rules. Accordingly, the ex-works Normal Value of the product under consideration has been determined based on constructed costs of production, duly adjusted to include selling, general & administrative costs and profits. The weighted average constructed normal value (CNV) so determined is *** **US\$/Pc**. The GB-wise CNV are given in the following table. The CNV for other grades/types of subject goods has been determined on the basis of average CNV of the GBs given in the table below, based on the principles of conservative approach.

Grade/Type	CNV US\$/Pc
NAND Based	
1 GB	***
2 GB	***
4GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***
COB Based	
4GB	***
8 GB	***

Determination of Normal Value for producers and exporters in Taiwan

97. 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.

98. The following producers/exporters from Taiwan have filed exporter's Questionnaire response.

- i. PNY Technologies Asia Pacific, Taiwan.
- ii. ATP Electronics, Taiwan, Inc, Taiwan.
- iii. ADATA Technology Corporation Limited, Taiwan.
- iv. Kingston Technology Far East Corporation, Taiwan (KTFE).
- v. Transcend Information Inc, Taiwan.

i. **PNY Technologies Asia Pacific, Taiwan**

99. As per the EQ response, PNY Technologies Asia Pacific is a producer of the subject goods in Chinese Taipei. It manufactures and supplies the subject goods on behalf of Hewlett Packard (HP) through a *** agreement and on payment of ***. It also sells the subject goods in PNY brand. In the home market, PNY Taiwan's channel of distribution includes both distributors and original equipment manufacturers. During the POI, PNY, Taiwan had exported the subject goods to India to two Indian buyers namely *** and ***. The exports of subject goods to India during the POI were carried out directly by

PNY, Taiwan and also through ***, Hong Kong. As informed by PNY, Taiwan, it exported ***pcs of subject goods to India during the POI, out of which ***pcs have been exported to ***and ***pcs have been exported to **. While the exports made to ***constituting ***% of the total exports have been made directly by the Company, the balance ***% of the exports have been made to ***through **, Hong Kong, who have not filed EQ response in the present investigation. The Authority notes that in the absence of exporter's questionnaire response by **, Hong Kong, the complete value chain in respect of the exports of subject goods made by PNY Technologies Asia Pacific, Taiwan cannot be established and the export price claimed by PNY Taiwan cannot be treated as representative of the Company. As already explained in this finding, in view of the above position, the Authority has not determined individual margins for PNY Technologies Asia Pacific, Taiwan. Under the above stated circumstances, since determination of normal value concerning PNY Technologies Asia Pacific, Taiwan is not considered to be relevant; the Authority does not determine individual normal value for PNY Technologies Asia Pacific, Taiwan based on the information provided by the said exporter.

ii. **ATP Electronics, Taiwan, Inc, Taiwan**

100. As per the EQ response, ATP Electronics, Taiwan is not a producer of the subject goods as it does not have a factory of its own for production of the subject goods. It claimed the factory of its related company namely **, Taiwan as its factory for the subject goods. The Authority notes that despite being a related company and the acknowledged involvement in the production of the subject goods, **, Taiwan has not cooperated and filed EQ response in the present investigation. In view of this position, normal value cannot be determined by the Authority for ATP Electronics, Taiwan. Further, the Authority notes that the subject goods produced and supplied by **, Taiwan are exported to India by the related Company ATP Electronics, Taiwan through Sony Supply Sales Chain Solutions, Japan, Sony EMCS, Japan, Sony Corporation, Japan and finally Sony Electronics Asia Pacific, Singapore to Sony India. This sales channel constitutes only ***% of the total sales of subject goods to India by ATP Electronics, Taiwan during the POI. ***% of the export of the subject goods made by ATP Electronics, Taiwan is through **, China, which company has not cooperated and has not filed EQ response in the present investigation. Moreover, the exports made through **, China have been routed through some party in Hong Kong which has also not filed EQ response. As already explained in this finding, in view of the above position and due to absence of complete value chain of production and sale of the subject goods claimed to have been exported to India during the POI, the Authority has not accepted the EQ response filed by ATP Electronics, Taiwan for determination of individual margins. Under the above stated

circumstances, since determination of normal value concerning ATP Electronics, Taiwan, is not considered to be relevant; the Authority does not determine individual normal value for ATP Electronics, Taiwan based on the information provided by the said exporter.

iii. **ADATA Technology Corporation Limited, Taiwan**

101. Although in its EQ response ADATA Technology Corporation Limited, Taiwan, has claimed itself to be a producer of subject goods, it does not have a factory of its own for manufacturing the said goods. Instead, ADATA, Taiwan declared the factory of ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR and Carry Technology Co Ltd, Taipei, Taiwan. Its related parties. As stated in the EQ response, ADATA Technology Corporation Limited, Taiwan has purchase agreement with ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR and processing agreement with Carry Technology Co Ltd, Taipei, Taiwan. As stated in the EQ response, ADATA Taiwan procures semi-finished products from ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR through purchase agreement and gets the same processed by Carry Technology Co Ltd, Taipei, Taiwan through processing Agreement. While ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR has filed EQ response in the present investigation, Carry Technology Co Ltd, Taiwan has not cooperated and filed EQ response. Further, the subsidiary companies involved in the production and sale of the subject goods in the subject countries namely ADATA Technology (HK) Co Ltd, Hong Kong and ADATA Technology Co Ltd, Taipei, Taiwan have also not cooperated and have not filed EQ response in the present investigation. As already recoded by the Authority in this finding, in the absence of EQ response by Carry Technology Co Ltd, Taipei, Taiwan and other related parties involved in production and sale of the subject goods, the Authority has not accepted the EQ response filed by ADATA Technology Corporation Limited, Taiwan and ADATA Technology (Suzhou) Co Ltd, Suzhou, China PR for determination of individual margins. Under the above stated circumstances, since determination of normal value concerning ADATA Technology Corporation Limited, Taiwan, is not considered to be relevant in view of the fact that the said Company is not a producer of subject goods by itself and its related parties through whom it produces the subject goods have not cooperated with the Authority and filed EQ response, the Authority does not determine individual normal value for ADATA Technology Corporation Limited, Taiwan.

iv. **Kingston Technology Far East Corporation, Taiwan (KTFE)**

102. As per the EQ response, Kingston Technology Far East Corporation, Taiwan (KTFE) is a producer of subject goods. As stated in the EQ response, KTFE, Taiwan undertakes manufacturing activity of subject goods on behalf of

Kingston Digital International Ltd, Ireland (KDIL) in lieu of raw materials/components supplied by them. KTFE is stated to be a contract manufacturer of subject goods for its related party namely KDIL, Ireland. KTFE provides manufacturing, packaging and logistic services to KDIL, Ireland for a servicing fee. No costing information has been provided in its EQ response since all the raw materials are supplied by KDIL, Ireland and KTFE, Taiwan merely does a job work for a fee. It is further stated in the EQ response that KTFE, Taiwan is not involved in the sale and distribution of the subject goods as well. In fact it is stated in the EQ response that KDIL, Ireland is the principal under whose instructions subject goods are manufactured by KTFE, Taiwan and sold to India and, therefore, Authority is required to determine the normal value and export price of KDIL, Ireland. However, Ireland not being a subject country, it is not permissible under the Anti-dumping Rules to determine normal value and therefore dumping margin for Ireland. In view of the above position, and as already explained in this finding, the Authority has not accepted the EQ responses filed by Kingston Technology Far East Corporation, Taiwan (KTFE), Kingston Digital International Ltd, Ireland (KDIL), Kaifa Technology Hong Kong Ltd, Hong Kong and Shenzhen Kaifa Micro Electronics Co Ltd, China PR (SKMEC) for determination of individual margins. Further, under the above stated circumstances, the Authority does not determine individual normal value for Kingston Technology Far East Corporation, Taiwan.

v. **Transcend Information Inc, Taiwan**

103. As per the EQ response, Transcend Information, Taiwan is a producer of subject goods. In the EQ response, Transcend Information (Shanghai) Co Ltd, China declared that the Company has only one channel of distribution as regards sales to India during the POI. It was further declared that Transcend Information, Taiwan handles the India sales for Transcend Information (Shanghai) Co Ltd, China. Subsequently, in response to queries raised by the Authority, it was informed that subject goods are also being exported to India through its related company in Taiwan namely Transcend Information, Taiwan. On being questioned about the reasons for adopting such a circuitous channel of export to India by involving additional expenditure when the Company is as such involved in direct physical export of subject goods to India, it was explained that Transcend Information, Taiwan acts as a distribution hub for the group and the additional cost of transporting the goods to Taiwan physically is negligible. However, from the information furnished by the Company, it is difficult to understand why a Chinese producer, who has got an established channel of direct export to India and invoicing through its related Taiwanese company would prefer to physically export the subject goods to its related party in Taiwan for exporting to India by incurring logistic

inconvenience, additional transportation, cargo handling charges, bank charges etc.

104. Although it was declared in the EQ responses that no other party other than the related Transcend companies are involved in the production and export of the subject goods to India during the POI, from the information provided in the EQ response it was noted by the Authority that during the POI, Transcend China and Transcend, Taiwan also exported significant volume of subject goods through ***, Singapore and ***, Singapore, who have not cooperated and filed EQ response in the present investigation. This kind of sales to India represents a third channel, which was not declared in the EQ response filed by the respondent companies. Since during the POI the entire exports of Transcend Information (Shanghai) Co Ltd, China PR to India were invoiced through Transend Information, Taiwan and a substantial volume of the subject goods produced by Transcend Information (Shanghai) Co Ltd, China PR was exported by Transend Information, Taiwan to India along with the subject goods produced by itself, the entire exports virtually becomes the exports of Transend Information, Taiwan. From the information furnished by Transcend, *** pcs of subject goods were exported to India through ***, Singapore and *** pcs of subject goods were exported to India through ***, Singapore, together constituting about ***% of the total exports made by Transcend China and Transcend Taiwan to India during the POI. This position contradicts the declaration of the companies in the EQ responses that no other party is involved in the production and export of the subject goods to India during the POI.
105. The Authority notes that in the absence of exporter's questionnaire response by ***, Singapore and ***, Singapore, through whom significant volumes of subject goods have been channelized by the Transcend group companies in China PR and Taiwan to India during the POI, the complete value chain is absent and the export price claimed by Transcend Information (Shanghai) Co Ltd, China PR and Transend Information, Taiwan cannot be treated as representative of these companies. In view of the above position, the Authority does not accept the EQ response filed by Transcend Information (Shanghai) Co Ltd, China PR and Transend Information, Taiwan and does not determine individual margins for the said companies.

Normal value for non-cooperative exporters from Chinese Taipei

106. The Authority notes that no other exporter/producer from Chinese Taipei has responded to the Authority in present investigation. For all the non-cooperative exporters/producers in Chinese Taipei, including the above stated companies, the Authority has determined the weighted average normal value on the basis of best available information. The Authority has determined the

Normal Value as per facts available in terms of Rule 6(8) of the Rules as US\$ ***/Pc by considering the cost of production of the domestic industry, taking the international prices of major raw materials, duly adjusted to include selling, general & administrative costs/expenses and reasonable profits i.e. 5%. The GB-wise constructed normal value (CNV) is given in the following table. The CNV for other grades/types of subject goods has been determined on the basis of average CNV of the GBs given in the table below, based on the principles of conservative approach.

Grade/Type	CNV US\$/Pc
NAND Based	
1 GB	***
2 GB	***
4GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***
COB Based	
4GB	***
8 GB	***

I. EXPORT PRICE

Export price for China PR

107. The Authority notes that none of the respondent Chinese producers/exporters have qualified to be considered for individual margins for the reasons already recorded in this finding. The Authority further notes that no other exporter/producer from China PR has responded in the present investigation. In view of this position, for all the non-cooperative exporters/producers in China PR, including the respondent companies from China PR, the Authority has determined their net export price as per facts available in terms of Rule 6(8) of the Rules. The weighted average net export price of the product under consideration determined on the above basis is US\$ ***/Pc. The GB-wise net export price (NEP) in respect of China PR is given in the table below:

Grade/Type	NEP US\$/Pc
NAND Based	
1 GB	***
2 GB	***
4GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***
Others	***
COB Based	

2GB	***
4 GB	***
8 GB	***
16 GB	***
32GB	***

Export price for Chinese Taipei

108. The Authority notes that none of the respondent producers/exporters from Chinese Taipei have qualified to be considered for individual margins for the reasons already recorded in this finding. The Authority further notes that no other exporter/producer from Chinese Taipei has responded in the present investigation. In view of this position, for all the non-cooperative exporters/producers in Chinese Taipei, including the respondent companies from Chinese Taipei, the Authority has determined their net export price as per facts available in terms of Rule 6(8) of the Rules. The weighted average net export price of the product under consideration determined on the above basis is US\$ ***/Pc. The GB-wise net export price (NEP) in respect of Chinese Taipei is given in the table below:

Grade/Type	NEP US\$/Pc
NAND Based	
1 GB	***
2 GB	***
4GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***
Others	***
COB Based	
2GB	***
4 GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***

J. DUMPING MARGIN

109. Considering the Normal Values and Export Prices determined above, the weighted average Dumping Margins are calculated as follows:

Sl. No	Country	Producer	Exporter	Weighted Average Normal value US\$/Pc	Weighted Average Net Export price US\$/Pc	Weighted Average Dumping Margin US\$/Pc	Dumping Margin %	Dumping Margin % Range
1	China PR	All Producers	All Exporters	***	***	***	***	70-80
2	Chinese Taipei	All Producers	All Exporters	***	***	***	***	70-80

K. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

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

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

- i. The production of the domestic industry increased steadily from 2009 until the POI. The production of the domestic industry increased by 197% in the POI as compared to the base year, 2009-10.
- ii. The volume and value of sales of the domestic industry also rose consistently during each year of the injury period.
- iii. The domestic industry's capacity utilization has been steadily increasing over the course of the injury period and the POI. It is a strong indication towards the positive performance of an industry and negates the domestic industry's injury claims.
- iv. The domestic industry's employment levels increased steadily over the course of the injury period and the POI.
- v. The productivity of the domestic industry has also increased. In particular, the productivity per day of the domestic industry has shown an increase.
- vi. Injury analysis has to be made on the basis of actual material injury during the POI. Material injury cannot be established on the premise

that the domestic industry could not achieve the targets it set before installing the plant.

- vii. The non-injurious price determined by the designated authority is highly inflated and is not based on real situation.
- viii. The warranty period must be factored while determining dumping margin & injury margin.
- ix. Adoption of 22% ROCE cannot be termed as reasonable to arrive at Non-injurious Price for the Domestic Industry.
- x. There is significant gap between the volume of domestic demand for the PUC and the volume of imports of the PUC from the subject countries. Imports have been far lesser than domestic demand for the PUC. Considering the substantial gap between the volume of domestic demand for the PUC and the volume of imports of the PUC from the subject countries, MBIL cannot be said to have suffered any injury.
- xi. Domestic industry has not suffered material injury in terms of profits, return on capital employed, cash profits, as it has witnessed growth in various economic parameters like production, capacity, capacity utilization etc.
- xii. The decline in price of USB drives is a global trend. Injury caused due to inefficient and lack of investment cannot be imputed on the imports of the subject product
- xiii. The methodology of determining price undercutting on weighted average basis is not appropriate.
- xiv. Analysis of the economic situation of the domestic industry based only on POI trends, as submitted by domestic industry, is not appropriate. Analysis of both the intervening trends as well as an end-to-end point analysis is decisive in determining the impact of imports on the domestic industry.
- xv. Late entry into business by the domestic industry with obsolete technology is the main cause of its losses. Domestic Industry is still manufacturing its products at a slow speed and low capacity whereas the market is being captured by new generation products with more storage capacities and speed.

- xvi. Alleged dumped imports do not reflect injury to the domestic industry as the data shows upward trend in production, total sales and capacity utilisation. The position of domestic industry can be attributable to its own inefficiencies and shortcomings. The annual report of domestic industry reflects that due to high overheads, supply chain issues, domestic industry is unable to achieve optimum utilisation. Applicant provides bright assessment of UFD segment in Annual Reports with no reference to injury on account of foreign competition or any other factor such as dumping.
- xvii. The Domestic Industry has stated that while it was establishing itself in the market, it started selling USB drives at a price lower than the fair price to improve competitiveness, production and economies of scale. Thus, by domestic industry's own admission, injury, if any, was self-inflicted.
- xviii. The domestic industry started the production of subject goods in 2009. However due to the reason of obsolete technology, inferior quality, inferior production technology etc, the growth of the domestic industry is sluggish as comparison to imported products. MBIL is a new entrant in the market, a majority of the consumers already have brand preferences in favour of reputed players such as SONY. Most users of UFDs have a strong preference for the established UFD's brands over those produced by the domestic industry, which only started UFD production in 2009.
- xix. Increase in volume of imports is a result of increase in domestic demand and change in consumption patterns in favour of well-established superior quality imported brands and not dumping.
- xx. The domestic industry does not manufacture UFDs that are compliant with USB 3.0 ports. Therefore, higher demand for imported UFDs which are of better quality and offer superior technology (such as UFDs compliant with USB 3.0 ports, among many others) is the primary reason for the increase in imports of the subject goods.
- xxi. Decrease in volume of domestic sales in POI is due to Increase in exports by MBIL. Injury, if any, suffered by the MBIL would be on account of its decision to cater to the export market and divert potential sales in the domestic market towards exports.
- xxii. The major factor in the cost of the subject goods is the raw material NAND Flash. The price of NAND Flash has decreased by more than 50% from January 2009 to December 2012. It would thus be evident

that with the substantial fall in the prices of the primary raw material in the production of the subject goods, a corresponding decrease in the cost of production of UFDs followed.

- xxiii. Although the prices of NAND Flash have fallen, MBIL is dependent upon imports of such inputs. Therefore, it incurs higher procurement costs as compared to producers in the subject countries that procure NAND Flash locally. This places domestic industry at disadvantaged position vis-s-vis producers in the subject countries.
- xxiv. Development of technology in terms of storage capacity, speed etc are the factors which should be examined by the Authority while establishing causal link.
- xxv. Causal link is absent since (a) there has been a significant increase in the domestic demand for the PUC; (b) there is a significant gap between the total domestic demand and the volume of imports; (c) the volume of domestic sales of the PUC have been increasing in tandem with the increase in domestic demand. Furthermore, the financial performance of MBIL has *improved* while the volume of imports has also increased.
- xxvi. MBIL has been inefficient and suffering significant losses even before it commenced the production of the PUC. Since entering the market for the PUC, MBIL has performed remarkably well in terms of production, capacity utilization, wages and employment, sales including export sales and profitability of the PUC. Financial losses, if any, suffered by MBIL is on account of its own inefficiencies.
- xxvii. Comparison of data concerning profits and return of DI reveals increase in losses and return on capital employed in 2009-10 and 2010-11, at time when the quantum of imports fell. There is no causal link between the imports and injury to domestic industry as the demand of subject goods is increasing due to high demand in India, which domestic industry is unable to fulfil.
- xxviii. Factors such as Changes in patterns of consumption, Competition between the foreign and domestic producers, Developments in technology, Export performance of the domestic industry needs to be examined as they have impacted the performance of the domestic industry.
- xxix. Imports from subject countries increased throughout the injury period. However, such increase in imports was in response to the increase in

demand in India, which the Domestic Industry in India was unable to cater to. Had imports been the main cause of injury to the Domestic Industry, then losses of the Domestic Industry would not have increased with decreasing imports. This in itself shows the lack of causal link.

Submissions made by the Domestic industry

111. The following are the injury related submissions made by the domestic industry during the course of the present investigation and considered relevant by the Authority:

- i. Moser Baer started commercially producing flash drives in May 2009. Even though certain injury parameters of the domestic industry, such as production, have improved over the injury period, such an improvement merely reflects the natural course of a newly set up industry.
- ii. The fact that Moser Baer started producing flash drives in May 2009 is a relevant economic factor. It is highly unlikely that an industry will produce less in its second year of functioning as compared with its first year's production. Just because actual production has not fallen does not imply that the domestic industry is not suffering material injury. The fact that production has been increasing over the period in fact establishes that injury to the domestic industry is not on account of technical constraints. The same is on account of commercial constraints created by dumping of the product in the country.
- iii. There was seen to be a significant increase in terms of production and sales volume. It was expected that this trend would continue subsequently, given low level of capacity utilisation. Even if the improvement in 2011-12 was not as pronounced as that in the previous year, it was expected from a product where commercial production started just about a year back and the domestic industry was having significant unutilised capacities. However, this was not the case. Due to the effects of the dumped imports, the domestic industry has not been able to achieve the level of growth expected.
- iv. In the period of investigation, even when company was able to increase its production and even when demand for the product under consideration increased, the domestic industry suffered significant decline in sales volumes. Large volumes of imports of flash drives at dumped prices are causing injury to the domestic industry and preventing it from achieving the expected level of performance.

- v. It would also be relevant to point out that the purpose of four years injury period for injury assessment is to consider the performance of the domestic industry for the entire period of four years, rather than comparing performance of the base year and the POI. Rather than an end-point to end-point analysis, the examination of the economic situation of the domestic industry should take into account events within the injury period.
- vi. The price of product under consideration has steeply fallen over the period. While it is true that the decline in price of NAND off-setted the ill effects of the decline in price to a significant extent, yet, in a situation where the domestic industry had started its operations in the market by offering sub-optimal price, it was not necessary for the domestic industry to reduce its price because of reduction in cost on account of NAND. However, the larger benchmark of the domestic industry is import price and not cost of production. Thus, even when domestic industry needed to withhold the prices or at the least offer price reduction less than what has been offered, the domestic industry has been forced to follow price reduction of the higher degree because of imports. Thus, even when domestic industry was already suffering losses, it has been forced to reduce the prices of the product in the market.
- vii. The domestic sales of the domestic industry increased upto 2011-12, but declined thereafter in the POI. The decline in sales in the POI is despite increase in demand for the product under consideration in India.
- viii. Market share of the domestic industry increased in 2010-11 and declined thereafter. The dumping of the product under consideration has adversely impacted the market share of the domestic industry.
- ix. The domestic industry was suffering financial losses all through the examined period. While the past losses are addressed by the commencement of commercial production by the domestic industry, the current losses are due to dumping of the product in the country. Cash profits and return on investment showed the same trend as that of Profit/Loss. The cash profits and return on investment of the domestic industry have remained adverse all through.
- x. The average stock has increased significantly over the injury period. The rise in inventories is despite increase in demand for the product under consideration in India.

- xi. The employment with the domestic industry has increased. Wages paid have shown normal wage growth. Productivity per day has also shown an increase. In any event, such parameters would be expected to show an increase in the case of a budding industry such as the domestic producer.
- xii. Both cost of production of the subject goods and the selling price have declined over the injury period. However, the selling price has remained lower than costs. Imports of subject goods from other countries are at much higher prices. There is no viable substitute to this product. Thus, the principal factor affecting the domestic prices is landed value of the subject goods from the subject country.
- xiii. Though the domestic industry has shown positive growth in terms of production and capacity utilization. The domestic industry however had negative growth in respect of profits, return on investment, cash profits, market share and inventories. This is clearly due to continued dumping of the product under consideration in the market.
- xiv. The petitioner was not able to sell even to the extent of increase in production. Further, the decline in sales volumes was despite increase in the demand for the product in the country.
- xv. The various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury. Consequent impact of dumping on the domestic industry has been significantly adverse.
- xvi. The following parameters establish that the injury to the domestic industry has been caused by the dumped imports.
 - a. Imported product was undercutting the prices of the domestic industry. Resultantly, the domestic industry has been prevented from charging prices in proportion to costs;
 - b. Deterioration in profits, return on capital employed and cash profits are directly a result of dumped imports;
 - c. Market share of the imports from subject countries increased in the POI. As a direct consequence, the market share of the domestic industry declined after increasing in 2011-12.
 - d. Growth of the domestic industry became negative in respect of a number of parameters.
 - e. The sales volumes of the domestic industry declined even when the demand for the product increased in the market. Thus, decline in sales volumes is despite increase in demand a direct result of increased imports.

- xvii. A number of interested parties have contended that the financial losses suffered by the domestic industry are due to inefficiencies. The NIP law introduced by the Govt. of India adequately addresses the issues of inefficiencies that may creep into the operations of a domestic industry.
- xviii. A cumulative assessment of injury caused by imports from subject countries is appropriate and required.
- xix. Since Moser Baer is a multi-product company, performance of the company is irrelevant in deciding on the performance of the product under consideration in the domestic market.
- xx. Even if it is admitted that there are brand preference in favour of established players, the fact is that the domestic industry is forced to follow the imports. Thus, if these established players resort to dumping and price reduction, the only option to the domestic industry is to follow the established players.
- xxi. Imports of USB3.0 devices are much less than imports of USB2.0 devices, which clearly shows that there is no preference for USB3.0.
- xxii. The dependence on imports of NAND Flash could not have impacted sales. The domestic industry's production has not suffered because of lack of availability of raw material or the fact that the domestic industry is importing the raw materials.
- xxiii. While it is admitted that evolution of higher capacity product is an ongoing phenomenon in the product, the data shows that this is not a sudden change. It is not a situation where within months and days, new models of higher capacities have completely replaced the existing models of lower capacities.
- xxiv. The fact that product price and input price have fallen over the period implies that the domestic industry should have achieved its projected performance. The injury to the domestic industry has been claimed in the form of decline in sales volumes, market share, sub-optimal growth in production and sales, decline in profit and return on investment. These parameters could not have been impacted by significant fall in the prices of the product and the inputs.
- xxv. There is no basis for the argument that higher demand and market share of imports is attributable to superior quality and reputed brand. The domestic industry has been supplying the product to a large number of global players on job work basis who are selling the product in their brand name.

- xxvi. Established practice of the Designated Authority has been followed in determining price undercutting. Price undercutting has been worked out by comparing the export price with the domestic selling price in India of the subject goods during the POI. The petitioner has compared comparable product types.
- xxvii. With respect to the argument that global decline in prices and not dumping is responsible for lower prices, the exporter is required to demonstrate that (a) prices declined to the same degree in its domestic market; and (b) there is no price difference between domestic and export price.
- xxviii. The volumes of 64GB USB Flash Drives sold in the domestic market are far lower than those sold in the export market, which shows that there is very low demand for 64 GB in the Indian market. As regards 128 GB USB Flash, the demand for this product type is still negligible and therefore it is not justified to undertake commercial production and sale, that too when the company is already suffering significant injury in producing and selling the product in the market.
- xxix. There is no basis for the argument that imports have increased because of increase in exports by MBIL. In any case, the petitioner is suffering significant unutilized capacities which clearly establish that the petitioner would have produced and sold much higher volumes in the domestic market.
- xxx. A number of interested parties contended on the basis of statement made in the various Annual Reports of Moser Baer that there is no injury to the domestic industry as far as product under consideration is concerned and if there is any injury being suffered by the domestic industry, the same is on account of other factors. Petitioner submits that since the company is a multi-product company, “performance of the company” is irrelevant in deciding on “performance of the product under consideration in the domestic market”. Petitioner is the sole producer of the product under consideration in India. Moser Baer produces four categories of products – storage media (solid state media and optical media), solar photovoltaic, solid state lighting (LED) and entertainment. The product under consideration formed 4% of storage media segment. Various goods produced by the company in the storage media segment are:

- a. Recordable Compact Discs (CD-R) and Rewritable Compact Discs (CD-RW),
- b. Recordable Digital Versatile Discs (DVD-R), Rewritable Digital Versatile Discs (DVD-RW), Mini DVD RW
- c. Blue Laser Discs (HD-DVD and Blu-ray)
- d. Memory Cards (Secure Digital Cards, Mini Cards, Micro Cards, Compact Flash Cards)
- e. USB flash drives
- f. pre-recorded CD and DVD

Examination of the Authority

112. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

113. As regards the impact of the dumped imports on the domestic industry Para (iv) of Annexure-II of the Anti-dumping Rules states as follows.

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

114. 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 as below:

- i. As regards the contention that injury analysis has to be made on the basis of actual material injury during the POI and material injury cannot be established on the premise that the domestic industry could not achieve the targets it set before installing the plant, the Authority notes that the material injury to the domestic industry has been assessed and established on the basis of the data furnished by the domestic industry pertaining to the period of investigation. The following injury analysis has established substantial injury to the domestic industry on account of dumped imports of subject goods from the subject countries.
- ii. As regards the contention that the non-injurious price determined by the designated authority is highly inflated and is not based on real situation, the Authority notes that the NIP has been determined in the present investigation as per Annexure III of the Anti-dumping Rules.
- iii. As regards the contention that the warranty period must be factored while determining dumping margin & injury margin, the Authority notes that the claim is unsubstantiated. Moreover, none of the respondent exporters from the subject countries have been found to be eligible for individual margins due to their failure to demonstrate complete value chain.
- iv. As regards the contention that adoption of 22% ROCE cannot be termed as reasonable to arrive at Non-injurious Price for the Domestic Industry, the Authority notes that it has provided 22% return on capital employed as per its consistent practice.
- v. As regards the contention that imports of the subject goods from the subject countries being far lesser than the domestic demand. Moser Baer cannot be said to have suffered injury, the authority notes that the objective of anti-dumping measures is to provide a level playing field to the domestic industry vis-à-vis dumped imports. For establishing injury, dumped imports need not be more than the domestic demand. Irrespective of the volume of imports, the domestic industry may suffer either volume injury or price injury or both.
- vi. It has been argued by the interested parties that the decline in price of USB drives is a global trend and injury caused due to inefficient and lack of investment cannot be imputed on the imports, the Authority notes that the dumping margin determined in respect of the subject countries is not only above de minimis level, they are substantial. What matters in an anti-dumping investigation is the level of dumping margin and not at what price the subject goods are sold in the international market.

- vii. As regards the contention that the methodology of determining price undercutting on weighted average basis is not appropriate, the Authority notes that when the subject goods widely differ in terms of memory storage capacity, all essential calculations for determination of dumping and injury margins need to be done in terms of weighted average basis.
- viii. As regards the contention that analysis of the economic situation of the domestic industry based only on POI trends is not appropriate, the Authority notes that the injury analysis has been done on the basis of the trends prevailing during the injury period including the POI.
- ix. As regards the contention that late entry into business by the domestic industry with obsolete technology is the main cause of its losses, the Authority notes that Moser Baer is the only producer of subject goods in the country and they have the capacity to manufacture almost the entire range of the subject goods.
- xxx. As regards the contention that higher demand for imported UFDs which are of better quality and offer superior technology (such as UFDs compliant with USB 3.0 ports, among many others not manufactured by domestic industry) is the primary reason for the increase in imports of the subject goods, the Authority notes that it has been clarified by the domestic industry that they have manufactured the UFD of higher capacities and 3.0 port UFDs and because of lack of adequate demand and suitable price they have not gone for commercial production of the said varieties.
- xxxi. It has been argued by the opposite interested parties that decrease in volume of domestic sales in POI is due to Increase in exports by MBIL. They have further argued that injury, if any, suffered by the MBIL is on account of its decision to cater to the export market. The Authority notes that if the domestic industry could compete in the export market, then they should not have any quality issue. Further, it proves the unattractiveness of the domestic market in the face of dumping which prompted domestic industry to go for overseas markets despite increasing demand in the domestic market. Moreover, injury analysis has been done by the Authority by excluding exports, thus injury, if any, to the domestic industry, on account of export, is irrelevant.
- xxxii. The claim that the drastic fall in the price of NAND Flash in the international market has resulted in the fall in the cost and price of UFDs, is unsubstantiated. Further, fall in the price of NAND should also

have impacted dumping margin determined by the Authority. But, instead the dumping margin determined by the authority in respect of the subject countries is not only positive but also significant.

- xxxiii. The price of NAND is more or less same in the international market. Both the domestic industry of the subject countries and the Indian industry must be procuring NAND at more or less comparable prices. Thus, it cannot be said that procurement cost of NAND is very high for Indian industry as compared to the industries of the subject countries.
- xxxiv. As regards the contention that development of technology in terms of storage capacity, speed etc are the factors which should be examined by the Authority while establishing causal link, the Authority notes that UFDs are products of constant research in the international market. However, the authority notes that UFDs of various designs, sizes, and capacities are technically, functionally and commercially substitutable.
- xxxv. As regards the contention that there is no injury to the domestic industry as the Annual Reports of Moser Baer painted a rosy picture about the performance of the Company in the product under consideration and the injury is on account of other factors, the Authority notes that Moser Baer is a multi product company. Thus being a multi product company, the performance of the company in general cannot be attributed to any specific product. Further, as claimed by the domestic industry, the product under consideration formed 4% of storage media segment.
- xxxvi. as per the statements made in the Annual Reports of Moser Baer that there is no injury to the domestic industry as far as product under consideration is concerned
- xxxvii. As regards the claim of some interested parties for a month by month injury analysis, the Authority does not approve of it as the relevant data does not show significant variation in prices.

L. Cumulative Assessment

115. The Annexure II (iii) of the Anti-Dumping Rules requires that where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the designated authority will cumulatively assess the effect of such imports, only when it determines that ;

- i. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of

export price and the volume of the imports from each country is three percent of the import of like article or where the export of individual countries is less than three percent, the imports collectively accounts for more than seven percent of the import of like article; and

- ii. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

116. The Authority notes that the dumped imports are entering the Indian market simultaneously from the subject countries. Therefore, the issue of cumulative assessment of the injury caused to the domestic industry due to dumped imports from these sources has been examined with respect to the above parameters and it was observed that:

- i. The margins of dumping of individual products from each of the subject countries are more than the *de-minimis* limit;
- ii. The volume of imports of individual products from each of the subject countries is more than the *de minimis*;
- iii. Imports from the subject countries are significantly undercutting the prices of the domestic industry in the market;

117. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from the subject countries on the domestic industry in the light of conditions of competition between imported product and like domestic product. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above.

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

119. As regards the impact of the dumped imports on the domestic industry. Para (iv) of Annexure-II of the Anti-dumping Rules states as follows:

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

120. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

M. Volume Effects of Dumped Imports

Import volumes and market share in imports

(a) Demand and market share

121. Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian producers and imports from all sources. The demand so assessed is given in the table below:

i) Demand

Particulars	Units	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Demand	000'Nos	8,289	10,237	17,890	23,539
Indexed	Trend	100	124	216	284
Imports from Subject Countries	000'Nos	6,961	7,437	15,235	21,480
Indexed	Trend	100	107	219	309
Imports from Other Countries	000'Nos	667	1,251	708	338
Indexed	Trend	100	188	106	51
Sale of Domestic Industry	000'Nos	662	1,550	1,947	1,721
Indexed	Trend	100	234	294	260

The Authority notes from the above table that the imports from the subject countries have increased throughout the injury period in line with increasing domestic demand. The imports during POI have increased significantly as compared to the base year as well as previous years.

ii) Market Share in Demand

Particulars	Units	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Import from Subject Countries	%	83.98%	72.64%	85.16%	91.25%
Import from Other Countries	%	8.04%	12.22%	3.96%	1.44%
Sale of Domestic Industry	%	7.98%	15.14%	10.88%	7.31%
Sale of other Indian Producers	%	0%	0%	0%	0%

From the above information it is noted that imports from the subject countries have completely dominated the Indian market throughout the injury period including the POI, whereas the market share of the other countries is a miniscule and the market share of the domestic industry has remained more or less at the same level during the POI as compared to the base year despite significant increase in demand. Further, it is noted that the increase in imports in POI is more than increase in demand for the product in the country. The market share of the imports increased in POI as compared to preceding year, whereas that of the domestic industry declined, thereby signifying that the entire increase in demand has been cornered by the imports from the subject countries.

iii) Import volume and market share

122. Imports volume from subject countries and other countries are as under:-

Particulars		Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Volume	Subject Countries	000'Nos	6,961	7,437	15,235	21,480
	Other countries	000'Nos	667	1,251	708	338
	Total imports	000'Nos	7,628	8,688	15,943	21,818
Market	Subject Countries	%	91%	86%	96%	98%
	China	%	63%	46%	54%	58%

Share in Imports	Taiwan	%	28%	40%	41%	41%
	Other countries	%	9%	14%	4%	2%

It is seen that imports have increased throughout the injury period. The Authority notes from the above table that the share of imports from the subject countries in the total imports to India was 98% during the period of investigation. Imports from the other countries are *de minimis* in the period of investigation. The Authority further notes that imports from the subject countries have increased significantly in the period of investigation as compared to the base year as well as previous year.

iv) Share of imports in relation to production

123. Authority observes that the imports from subject countries have increased in relation to the production of the domestic industry, as is evident from the following table:

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Imports from Subject Countries	000'Nos	6,961	7,437	15,235	21,480
Production of domestic industry	000'Nos	1,068	2,020	2,523	3,064
Dumped Imports in relation to production of domestic industry.	%	652%	368%	604%	701%

v) Capacity & capacity utilization

124. Capacity and capacity utilization of the domestic industry over the injury period is given in the following table:-

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Capacity MT	000'Nos	4,058	7,183	7,203	7,203
Production	000'Nos	1,068	2,020	2,523	3,064
Capacity utilization	%	26.31	28.12	35.03	42.54

It is noted from the above table that capacity utilization of the domestic industry has increased throughout the injury period including the POI. It is

further observed that there has been an enhancement of capacity in the period 2010-11 in line with the increase in demand.

vi) Production

125. Production data of the domestic industry is given in the following table:-

	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Production	000'Nos	1,068	2,020	2,523	3,064
Trend	Indexed	100	189	236	287
Demand	000'Nos	8,289	10,237	17,890	23,539
Trend	Indexed	100	124	216	284
Production in relation to Demand	%	13%	20%	14%	13%

It is noted from the above table that production of the domestic industry has increased throughout the injury period including the POI in tandem with the increase in demand.

vii) Sales volume

126. The sales volume of the domestic industry is given in the following table:

	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Domestic sales	000'Nos	662	1,550	1,947	1,721
Trend	Indexed	100	234	294	260
Demand	000'Nos	8,289	10,237	17,890	23,539
Trend	Indexed	100	124	216	284
Market Share of domestic industry in Demand	%	8%	15%	11%	7%

It is noted from the above table that sales of the domestic industry in absolute terms has showed increasing trend till 2011-12 and then declined despite increase in demand, though the market share has declined after 2011.

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

127. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the cost of production, Net Sales Realization and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject countries.

Price Undercutting

128. Price undercutting has been assessed by comparing the export price with the domestic selling price in India of the subject goods during the period of investigation. It would be seen that the landed price of imports is lower than the selling price of the domestic industry for almost all storage capacities of USB flash drives, thus resulting in overall price undercutting.

Subject Countries

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Landed Value	Rs./NO	358.40	317.20	255.17	231.24
Net Sales realization*	Rs./NO	***	***	***	***
Price Undercutting	Rs./NO	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	20-30	40-50	40-50	40-50

China PR

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Landed Value	Rs./NO	352.35	315.28	253.44	234.46
Net Sales realization*	Rs./NO	***	***	***	***
Price Undercutting	Rs./NO	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	20-30	40-50	40-50	40-50

Taiwan

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Landed Value	Rs./NO	372.25	319.38	257.43	226.66
Net Sales realization*	Rs./NO	***	***	***	***
Price Undercutting	Rs./NO	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	20-30	35-45	45-55	40-50

*Note:- * Weighted average Net Sales Realizations have been determined based on the import volumes of all grades/GBs from the relevant subject country.*

It is noted from the above table that imports from the subject countries individually as well as cumulatively is undercutting the prices of domestic industry.

Price Underselling

129. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been determined considering the cost of production of the domestic industry for the product under consideration during the POI, in accordance with Annexure III of the Anti-dumping Rules. The analysis shows that the landed value of subject imports was below the non-injurious price as can be seen from the table below. The GB-wise Non Injurious Price (NIP) are given below in table-1. The NIP for other grades/types of subject goods has been determined on the basis of average NIP of the GBs given in the table-1 below, based on the principles of conservative approach. The GB-wise landed value is given below in Table-2(a) & 2(b) for China PR and Chinese Taipei respectively.

Table-1

Grade/Type	NIP Rs/Pc
NAND Based	
1 GB	***
2 GB	***
4GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***
COB Based	

4GB	***
8 GB	***

Table-2(a)
Landed Value - China PR

Grade/Type	Landed Value Rs/Pc
NAND Based	
1 GB	***
2 GB	***
4GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***
Others	***
COB Based	
2GB	***
4 GB	***
8 GB	***
16 GB	***
32 GB	***

Table-2(b)
Landed Value – Chinese Taipei

Grade/Type	Landed Value Rs/Pc
NAND Based	
1 GB	***
2 GB	***
4GB	***
8 GB	***
16 GB	***
32GB	***
64 GB	***
Others	***
COB Based	
2GB	***
4 GB	***
8 GB	***
16 GB	***
32 GB	***
64 GB	***

The weighted average analysis of NIP and Landed Value, based on the GB-wise NIP and Landed Value mentioned in the Table 1 and Table 2(a) & 2(b) above, the Authority notes that the landed value of imports of the subject goods, originating in or exported from the subject countries, was below the non-injurious price of the domestic industry as can be seen in the table below. The Authority further notes that imports from the subject countries individually as well as cumulatively is having underselling effect on the prices of domestic industry.

Particulars	Unit	China	Taiwan	Subject Countries
Non-injurious price**	Rs./No.	***	***	***
Landed price (POI)	Rs./No.	234.46	226.66	231.24
Price underselling	Rs./No.	***	***	***
Underselling	%	***	***	***
Underselling	% Range	75-85	80-90	80-90

Note:-** Weighted average Non-injurious price have been determined based on the import volumes of all grades/GBs from the relevant subject country.

Price suppression/depression

130. The Authority examined whether the effect of the dumped imports was to depress the prices of the like article in India, or prevent price increase which would have otherwise occurred.

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Cost of sales	Rs./No.	***	***	***	***
<i>Indexed</i>	<i>Trend</i>	100	98	81	72
Selling Price***	Rs./No.	***	***	***	***
<i>Indexed</i>	<i>Trend</i>	100	86	74	63
Landed Price	Rs./No.	358.40	317.20	255.17	231.24
<i>Indexed</i>	<i>Trend</i>	100	89	71	65

Note:-*** Weighted average Selling price has been determined based on the sales volume of domestic industry.

Authority notes that since grade wise analysis is involved, comparing selling price of all years with landed price of import would not lead to a meaningful comparison. However, it is noted from the above information that the cost of sales has decreased from 100 during base year to 72 in the POI, whereas the selling price decreased from 100 to 63 during the same period. Thus, the prices were suppressed on account of dumped imports. It is further noted that the decrease in the selling price is more than decrease in cost.

O. Economic parameters of the domestic industry

i. Profit/Loss

131. The profitability of the domestic industry is given in the following table:

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Profits	Rs./No.	(***)	(***)	(***)	(***)
	<i>Indexed</i>	<i>(100)</i>	<i>(148)</i>	<i>(111)</i>	<i>(110)</i>
Cash Profit	Rs./No.	(***)	(***)	(***)	(***)
	<i>Indexed</i>	<i>(100)</i>	<i>(148)</i>	<i>(107)</i>	<i>(106)</i>

It is seen from the above information that the domestic industry has incurred losses throughout the injury period including the POI. This deplorable position of the domestic industry is despite significant and increasing demand for the subject goods in the country.

ii. Return on investment

132. The return on investment of the domestic industry is given in the following table:

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
ROCE	%	(***)	(***)	(***)	(***)
	<i>Indexed</i>	<i>(100)</i>	<i>(233)</i>	<i>(167)</i>	<i>(179)</i>

It is seen that the return on investment of the domestic industry remained negative throughout the injury period.

iii. Cash Flow

133. Authority has examined the trends in cash profits in order to examine the impact of dumping on cash flow situation of the domestic industry. Information regarding cash profit of the domestic industry is given in the following table:

	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Cash profits	Rs./No.	(***)	(***)	(***)	(***)
Trend	<i>Indexed</i>	<i>(100)</i>	<i>(148)</i>	<i>(107)</i>	<i>(106)</i>

It is seen from the above information that the cash profits of the domestic industry have remained negative throughout the injury period including the POI despite heavy demand for the subject goods in the country.

iv. **Inventories**

134. Inventories with the domestic industry moved as follows:

Particulars	Units	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Average Stock	000'Nos	48	42	46	37
Stock as no. of days sale	000'Nos/days	***	***	***	***

It is noted that inventories with the domestic industry have declined in the POI as compared to the base year.

Productivity

135. From the information given below, the Authority notes that productivity of the domestic industry shows same trend as that of production. Productivity per employee has increased throughout the injury period.

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Productivity per employee	No./ per employee	***	***	***	***
Productivity per day	No./day	3,050	5,771	7,208	8,755

v. **Employment and Wages**

136. It is seen from the table below that the employment level has increased till 2010-11 and then declined till POI.

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Employment	Nos.	***	***	***	***
Indexed	Trend	100	143	112	110
Wages	Rs/Lacs	***	***	***	***
Indexed	Trend	100	192	171	187

vi. Magnitude of Dumping

137. The dumping margin determined in respect of the producers/exporters from the subject countries are above de minimis.

vii. Growth

138. The Authority notes from the table below that growth of the domestic industry in respect of production, domestic sales, profit & ROI was negative.

Particulars	Unit	2009-10	2010-11	2011-12	POI (Jan to Dec, 2012)
Production	%	-	89	25	21
Capacity Utilization	%	-	2	7	8
Domestic sales	%	-	134	26	-12
Inventory	%	-	-12	11	-21
Profit/ No	%	-	48	-25	-1
ROI	%	-	-19	9	-2

viii. Ability to raise capital investment

139. It is noted that the domestic industry's ability to rope in any additional investments in the product depends upon the market situation. As it is evident, the market share of the domestic industry is yet to reach any considerable levels.

ix. Factors Affecting Domestic Prices

140. The examination of the import prices from the subject countries and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc shows that the landed value of imported material from the subject countries is below the selling price and the non-injurious price of the domestic industry, causing significant price undercutting as well as price underselling in the Indian market. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the landed value of the imports of dumped subject goods from subject countries.

P. Conclusion on material injury

141. After examining and analysing the facts and figures concerning injury to the domestic industry, the Authority concludes that the dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India. It is further noted that imports of the product from subject countries were undercutting the prices of the domestic industry in the market. Even though cost of production decreased over the injury period, decline in selling price were higher than decline in cost of production. The imports were thus suppressing/depressing the prices of the domestic industry and preventing the price increase that would have otherwise occurred in the absence of dumped imports. With regard to consequent impact of the dumped imports on the domestic industry, it is noted that demand for the subject goods in the domestic market increased significantly, whereas production and sales of the domestic industry remained at the minimal level and more or less stagnant in the face of dominant presence of the dumped imports from the subject countries. The performance of the domestic industry was significantly adverse in terms of profits, profitability, return on investments, and cash flow. Thus, the analysis of various parameters relating to domestic industry collectively and cumulatively establishes that the domestic industry has suffered material injury.

Q. Causal Link

142. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting, underselling and price suppression and depression effects, other indicative parameters listed under the Anti-dumping Rules have been examined to see whether any other factor, other than the dumped imports have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined:-

(a) Volume and prices of imports from third countries

143. The Authority notes that imports of subject goods from third countries are negligible and thus could not have caused injury to the domestic industry.

(b) Trade restrictive practices of and competition between the foreign and domestic producers

144. The Authority notes that the imports of the subject goods in India are freely importable. As regards competition between domestic and foreign producers, the Authority notes that the imported subject goods and domestically

produced subject goods are like articles and are competing in the same market. As the domestic industry is the sole producer of subject goods in the country, it cannot be said that conditions of competition emanating from fellow domestic producers have caused injury.

(c) Contraction of demand or Changes in the pattern of consumption

145. The Authority notes that demand for the product showed significant increase during the injury period including the POI. Thus, the Authority notes that injury to the domestic industry was not due to contraction in demand. Further, the subject goods of different design, size, speed and capacity are technically and commercially substitutable. In view of this, there is no such change in the pattern of consumption that has resulted in injury to the domestic industry.

(d) Development in Technology

146. None of the interested parties have furnished any evidence of any change in technology of production of the subject goods which can be construed as cause of injury to the domestic industry.

(e) Export performance of Domestic Industry:

147. The details of exports by the domestic industry are as follows:

Period	2009-10	2010-11	2011-12	POI
Volume in 000Nos	358	482	556	1357
Indexed	100	135	155	379

The Authority notes that in the injury analysis, the performance of the domestic industry has been segregated by the Authority for domestic and export markets. The segregated data has established injury to the domestic industry on account of dumped imports.

FACTORS ESTABLISHING CAUSAL LINK

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

- i. The dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India.
- ii. The imports of the subject goods from the subject countries

are undercutting the prices of domestic industry. Further, the dumped imports have caused price underselling, price suppression as well as price depression effects.

- iii. Significant increase in the demand coincided with significant increase in imports of subject goods from subject countries deprived the domestic industry from its rightful share in the domestic market;
- iv. Performance of the domestic industry with regard to profits, market share, cash profit, return on investments, etc, have shown negative growth.

149. Thus the Authority concludes that the domestic industry suffered material injury due to dumped imports.

R. Magnitude of injury and injury margin

150. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Annexure III of the Anti-dumping Rules. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries as follows:

Particulars	Unit	China PR	Taiwan	Subject Countries
Non-injurious price	US\$./No.	***	***	***
Landed price (POI)	US\$./No.	4.37	4.22	4.31
Injury Margin	US\$./No.	***	***	***
Injury Margin	%	***	***	***
Injury Margin	% Range	75-85	80-90	80-90

S. Post Disclosure Comments

151. The following are the post-disclosure submissions/comments made by the domestic industry and other interested parties and considered relevant by the Authority.

Flextronics Marketing (L) Ltd, Malaysia

- i. Flextronics has been engaged by SanDisk to provide manufacturing service in relation to the subject goods. Flextronics has in turn engaged a

manufacturing company to perform contract manufacturing service in relation to the subject goods. The subject goods are then supplied by Flextronics to SanDisk for onward handling.

- ii. Had the Authority issued a DL requesting for the information concerning the manufacturers engaged by Flextronics for manufacturing the subject goods, the said information could have been provided.

SanDisk Corporation, SanDisk Semiconductor (Shanghai) Co Ltd, SanDisk Trading (Shanghai) Co Ltd, SanDisk Manufacturing, Ireland and SanDisk International Ltd, Ireland (SanDisk)

- i. Designated Authority has rejected the submissions made by SanDisk in violation of the principles of fairness and natural justice.
- ii. The petition filed by the domestic industry is unreliable as it did not contain basic evidence relating to dumping, injury and causal link.
- iii. The correctness of the information furnished in the application filed by Storage Media Products Manufacturers and Marketers Welfare Association should have been certified by a responsible official of the domestic industry.
- iv. The applicant has constantly changed the data concerning import volume without stating any reasons. Finally, Designated Authority discarded the import statistics submitted by the applicant and used the import statistics obtained from the DGCI&S. Since the very basis for claiming dumping and injury provided in the petition filed by the Applicant has been rejected by the Authority, the petition filed by the Applicant becomes unreliable and therefore the investigation should be terminated.
- v. It has been disclosed by the Authority in the disclosure statement for the first time that imports data from DGCI&S has been relied upon in the investigation. But, the detailed transaction-by-transaction import statistics relied upon by the Authority has not been provided to the interested parties.
- vi. Authority has incorrectly stated in the disclosure statement that manufacturing service providers (contract manufacturers) to SanDisk Semiconductor (Shanghai) Co Ltd filed the questionnaire at belated stage. It was only subsequent to discussions held with the Authority and when authority sought questionnaire from the service providers also, SanDisk requested and persuaded such unrelated service providers to file response to questionnaire. Thus, responses to questionnaire were filed by SanDisk or its contract manufacturers well in time and in the best interests of the investigation process.

- vii. The calculation of Non-injurious price (NIP) by the Authority is incorrect.
- viii. It is incorrect on the part of the Authority to reject responses without verifying them. The anti-dumping provisions do not give a right to the investigating authority to completely disregard all the information provided by a participating interested party.
- ix. The Designated Authority has not found any fault with respect to export price provided by SanDisk to determine the Landed Value and in turn the injury margin for estimating the rate/amount of the Anti-dumping Duty. However, the Designated Authority did not use even such information and used information, which was not disclosed and highly prejudicial to the interest of SanDisk.
- x. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs53.69. Adoption of such an unrealistic exchange rate, which will not return in future, is highly unjustified and represent no commercial/economic logic.
- xi. The market is always looking for smallest size higher capacity storage devices with the fastest speed of storing and retrieving the data. Further, the cost and prices are also varying substantially with the change of capacity and speed. During POI higher capacity USBs (64/128GB) were imported into India and consumed by the Indian users, however, the domestic producer could not produce USBs of capacity higher than 32 GB. The domestic producer did not also produce and supply USBs of 3.0 ports. Anti-dumping Duty cannot be imposed on such products/grades/ranges of products which are not manufactured by the Domestic Industry.
- xii. The Authority have simply relied upon the information provided by the petitioner that they have merely imported pre-assembled COB or components of COB and not COB based flash drives. If the components imported by them are already assembled by all other components of USBs, then it is apparent that such component would attend the essential function of USB and classified and characterized as USB only.
- xiii. It also appears that the COB as well “the COB that is pre-assembled” which is described by Applicant as component has been included in the import statistics relied upon by the Authority. The Designated Authority has not disclosed the classification and product description under which such component has been imported by the Applicant and how that is different from USB.
- xiv. The capacity to manufacture is not the criteria in an anti-dumping

investigation because in such case no injury would have caused to non-existing goods. Though the determination of the Authority that it is not obligatory on the part of the domestic industry to manufacture all the substitutable varieties of a PUC may be considered correct, however, the established jurisprudence also needs to be taken into consideration that if the domestic industry does not produce a variety, then such a variety needs to be excluded from the scope of the product under consideration.

- xv. SanDisk submitted the entire value chain. The inability of the authority to understand the complexity of the value chain set-up should not result in penal rate of duty for an exporter.
- xvi. Though the Authority has proceeded to construct both normal value and export price, yet there remains an obligation on the part of the Authority to disclose the methodology and components used for determining such constructed normal value and export price.
- xvii. It is not known how the landed value of imports has been arrived at for price undercutting analysis. The landed value arrived at cannot be considered correct as a 1 GB pen-drive cannot be clubbed together with a 132 GB pen drive and arrive at one common determination.
- xviii. While arriving at price underselling, the Designated Authority has determined weighted average non-injurious price. SanDisk fails to understand how import volumes are relevant for determining non-injurious price.
- xix. The product under consideration as defined by the Authority goes beyond 64 GB Flash Drives and covers higher end models as well. With no non-injurious price available for such USB Flash Drives beyond 64GB, how can a fair non-injurious price for such grades be determined? Without having any non-injurious price and ultimately injury margin, such grades cannot be subjected to any anti-dumping duty.

Sony Group companies and ATP Electronics

- i. The COB components imported by the domestic industry are nothing but the COB flash drive in an unassembled form. The only addition by the Applicant to the imported component is placing the component in a plastic or metal housing in order to enhance its thickness.
- ii. Since complete responses are provided by the Sony group of companies, the Authority must compute an individual dumping margin for Sony, based on Sony's export price of the subject goods to India.

- iii. The Authority has determined the normal value for Taiwan based on best available facts. However, the Authority has failed to provide details on the method of determination of normal value. Nothing in the Indian AD Rules or the WTO ADA permits the construction of the normal value based on the domestic industry's costs of production in India for market economies such as Taiwan. The dumping margin determined by the Authority has been skewed upward as a result of the erroneous normal value and export price taken.
- iv. India is not an appropriate analogue country for purposes of construction of normal value for China.

Transcend Information (Shanghai) Ltd, China PR and Transcend Information Inc, Taiwan

- i. As per the prescribed exporter's questionnaire, it is not obligatory on the part of the respondent exporters to declare the unrelated parties involved in the production/export of subject goods.
- ii. Export from exporting country or territory is complete when goods are exported from the subject country. In the instant case subject goods were exported from China or Taiwan once the same are cleared from Taiwanese/Chinese Customs Authorities.
- iii. The price at which these goods are cleared by Taiwanese/ Chinese Customs Authorities is the export price for exports to India. The Authority should adopt the same for computing Dumping Margin.
- iv. Transcend Information (Shanghai), Ltd, China PR (Producer/Exporter) and Transcend Information, Inc Taiwan (Producer/Exporter) have reported all sales transactions which were destined for exports to India. The goods have been sold first to an independent buyer either in India or in Singapore and the same should form basis of calculating Export Price to India. The Law does not permit an Investigating Authority to reject Export Price of a fully cooperating producer/ exporter on the ground that some of its exports transactions are made through an unrelated Traders who have not cooperated with the Authority.
- v. There is no Normal Value explanation in the disclosure statement. Normal Value disclosure is the same wording paragraph with export price disclosure paragraph.

PNY Technology Asia Pacific Ltd and PNY Technologies INC, Shenzhen

- i. PNY'S export price and normal value information cannot be rejected on the ground that parties involved in the value chain have not filed EQ response.
- ii. DGAD has not considered the other domestic producers of subject goods namely Amkette and Om Nanotech as domestic industry while deciding standing of MBIL.
- iii. The import statistics relied upon by the Authority has not been provided to the interested parties.
- iv. Excessive confidentiality maintained by the Authority prevents PNY from making meaningful comments.
- v. DGCI&S import statistics relied upon by the Authority should be provided.

Domestic Industry

- i. The product under consideration is "USB Flash Drives", which includes PCB based USB flash drive and COB based USB flash drive. Since the product under consideration is reported using different descriptions and different customs classifications, the Authority may kindly specify in duty table all known product description and Chapter 84 and 85 as the customs classification.
- ii. Further, the Designated Authority may specify in the duty table that the product under consideration should attract duty regardless of description and classifications used by the importers. Further, the Designated Authority may kindly specify in duty table that the customs classification is indicative only.
- iii. The scope of product under consideration includes USB Flash Drives ranging from 16 MB to 256 GB of having differed compatibility of 1.1, 2.0 and 3.0 generations. The PCB based flash drive and COB based flash drives are technically and commercially one product.
- iv. The petition was filed by Storage Media Products Manufacturers & Marketers Welfare Association on behalf of Moser Baer India Limited, the sole producer of the product under consideration in India. Moser Baer constitutes domestic industry within the meaning of Rule 2(b) of the Anti

Dumping Rules, and the petition satisfies the criteria of standing in terms of Rule 5 of the Rules.

- v. There was excessive and unwarranted confidentiality claimed by the exporters, which were aimed at getting questionnaire responses accepted by sidelining the domestic industry. The disclosure statement establishes extent of suppression of facts by these exporters. Any reasonable person cannot understand the facts from these NCV responses. The non confidential versions submitted by the interested parties are violative of the law and precedents of the Authority.
- vi. The foreign producers have not fully cooperated with complete questionnaire response and the gaps are too alarming and significant. The flow of the subject goods in respect of all respondent companies is either circuitous or does not represent complete value chain. None of the respondent producers/exporters from the subject countries have been found to be eligible for determination of individual margins.
- vii. The product under consideration has been exported at prices below normal value, resulting in dumping due to which the domestic industry has suffered injury.
- viii. Performance of the domestic industry has deteriorated in terms of a number of parameters like profits, market share, cash profit, return on investments; etc. Overall growth of the domestic industry over the injury period was adverse. Despite significant demand in the Country, the domestic industry was prevented from utilising its capacity. The market share of the domestic industry is yet to reach any considerable levels.
- ix. There has been significant increase in imports from the subject countries in absolute terms as well as in relation to production and consumption in the country on a cumulative basis. Imports are significantly undercutting the prices of the domestic industry. The imports were also suppressing as well as depressing the prices of the domestic industry.
- x. There is sufficient causal link between dumping and injury to the domestic industry.
- xi. Duty may be recommended in terms of fixed amount, expressed in US\$ term.

Examination by the Authority

152. The post disclosure comments made by the interested parties and considered relevant by the Authority are examined as below:

- i. No disclosure comments have been made on behalf of the following respondent exporters:
 - a. UTAC Hong Kong Ltd, Hong Kong.
 - b. UTAC Dongguan Ltd, China PR.
 - c. STATS ChipPAC Shanghai Co Ltd, Shanghai, China PR.
 - d. STATS ChipPAC (BVI), Ltd, British Verginia Island.
 - e. ADATA Technology (Suzhou) Co., Ltd, China PR.
 - f. ADATA Technology Corporation Limited, Taiwan.
 - g. Kaifa Technology Hong Kong Ltd, Hong Kong
 - h. Kingston Digital International Ltd, Ireland.
 - i. Kingston Technology Far East Corporation, Taiwan.
 - j. Shenzhen Kaifa Micro Electronics Co Ltd, China.
 - k. Transcend Trading (Shanghai) Co Ltd, China PR.
- ii. As regards the post disclosure comments made by Flextronics Marketing (L) Ltd, Malaysia that the information regarding the contract manufacturer engaged by them for manufacturing the subject goods on behalf of SanDisk could have been provided had the Authority requested for the same, the Authority notes that the EQ response filed by the said company was much belated. Moreover, Malaysia not being a subject country, Flextronics Marketing (L) Ltd has no locus standi in the present investigation as they are admittedly not involved in the production of the subject goods. Nevertheless, even at the post disclosure stage the concerned manufacturer who was engaged by Flextronics Marketing (L) Ltd, Malaysia for manufacturing the subject goods on behalf of SanDisk could have filed complete information. Even SanDisk, being the claimant for individual margins in the present investigation could have ensured filing of complete information. Despite opportunities provided by the Authority, all the parties involved in the value chain did not file EQ response with complete information concerning production and sale of the subject goods exported to India during the POI.
- iii. As regards the contention that Authority has rejected the responses/submissions made by SanDisk in violation of the principles of natural justice, the Authority notes that adequate opportunities were provided to the interested parties including SanDisk during the course of the investigation. But, despite opportunities provided, all the parties

involved in the value chain did not file EQ response with complete information concerning production and sale of the subject goods exported to India during the POI. In view of this position, the Authority did not grant individual margins to SanDisk.

- iv. As regards the contention that the petition filed by the domestic industry was unreliable as it did not contain basic evidences relating to dumping, injury and causal link, the Authority reiterates that the present investigation was initiated on the basis of prima facie evidence furnished by the domestic industry showing dumping, injury and causal link and justifying initiation of the investigation in accordance with the Act and Rules. The essential facts of the investigation disclosed by the Authority amply revealed the presence of dumping, injury and causal link. Moreover, the present final finding is self explanatory in this regard.
- v. As regards the contention that the Application filed on behalf of the domestic industry was not certified by a responsible official of the industry concerned, the Authority notes that the petition in the present investigation was filed by Storage Media Products Manufacturers and Marketers Welfare Association and the application was signed by the Director of the association.
- vi. As regards the contention that the applicant has constantly changed the data concerning imports without stating any reasons, the Authority notes that in present investigation the imports data from DGCI&S has been relied upon and necessary analysis has been carried out basing on the said data. Therefore, the alleged changes made by the petitioner domestic industry in the imports data have no bearing in the analysis and conclusions arrived at by the Authority in the present findings.
- vii. Although Authority had prima facie relied upon the import data furnished by the petitioner for the purpose of initiation of the investigation, post initiation transaction-wise import data was obtained by the Authority from the DGCI&S and relied upon for necessary analysis. Therefore, it is incorrect to state that the petition has become invalid on this account.
- viii. As regards the contention that responses to questionnaire were filed by SanDisk or its contract manufacturers well in time and in the best interests of the investigation process, the Authority notes that the EQ responses filed by some of the parties claimed to be manufacturing service providers to SanDisk are much belated. Moreover, as already

stated in the present findings, most of the supporting manufacturers claimed to be involved in the production/sale of the subject goods have not filed EQ response. Despite opportunities provided by the Authority, all the parties involved in the value chain did not file EQ response with complete information concerning production and sale of the subject goods exported to India during the POI.

- ix. As regards the contention of the interested parties that the detailed transaction-by-transaction import statistics obtained from DGCI&S and relied upon by the Authority has not been provided, the Authority notes that the assessed volume and value of the imports of the subject goods relying upon the imports data obtained from DGCI&S have been declared in this finding. The transaction-by-transaction import data, as claimed by the interested parties cannot be made available being confidential in nature and containing information concerning name of the importers, IE Code No. of the importers, Bill of Entry No. of the importers, Port of import, date of import, etc. In terms of Rule 6(7) of Anti-dumping Rules, "The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation," and in terms of the said provisions, the non-confidential information presented to it by the interested parties participating in the present investigation have been made available in the public file maintained by the Authority. DGCI&S provides the transaction level imports data to the DGAD for anti-dumping investigations only. Designated Authority is not authorized to make available the said transaction-by-transaction import statistics to the interested parties. In view of the above, the transaction-wise imports data obtained from DGCI&S and relied upon by the Authority in the present investigation is not made available to the interested parties.
- x. As regards the contention that the calculation of Non-injurious price (NIP) by the Authority is incorrect, the Authority notes that NIP in the present investigation has been determined in terms of Annexure III of the Anti-dumping Rules.
- xi. As regards the contention that it is incorrect on the part of the Authority to reject responses without verifying them, the Authority notes that when all the parties involved in the value chain did not file EQ response with complete information, it would not have served any purpose had the Authority verified the incomplete information furnished by the respondents.
- xii. As regards the contention that Authority could have accepted the

export price of the respondent exporters and determined landed value for determination of injury margin, the Authority notes that in the absence of complete value chain, the export price claimed by the respondent exporters cannot be accepted as representative and reliable. As regards determination of landed value for determination of injury margin, in the absence of reliable and complete information concerning the respondent exporters, the Authority has relied upon the imports data from the DGCI&S.

- xiii. As regards the contention that the exchange rate adopted by the Authority is highly unjustified and represent no commercial/economic logic, the Authority notes that the exchange rate prevailing during the POI is relevant and therefore the same has been adopted and relied upon in the present investigation.
- xii. As regards the contention that cost and price of the subject goods vary widely in consonance with capacity and speed and the same factor should have been taken into account by the Authority while defining PUC, the Authority notes that this aspect has already been examined and addressed in the relevant paras of this finding. The Authority reiterates that all the varieties of the subject goods are technically and commercially substitutable in the sense of being flash drives.
- xiv. As regards the contention that anti-dumping duty cannot be imposed on such products/grades/ranges of products which are not manufactured by the domestic industry, the Authority reiterates that as per the Anti-dumping Rules it is not obligatory on the part of the domestic industry to manufacture all the substitutable varieties of a PUC. Otherwise, the very purpose of imposing anti-dumping duty for creating a level playing field for the domestic industry in the domestic market vis-à-vis dumped imports would be defeated when the different varieties of the flash drives are technically and commercially substitutable.
- xv. As regards the contention that the pre-assembled COB imported by the petitioner may have all the essential functions of USB and can therefore be classified and characterized as USB only, the Authority notes that the issue has been adequately clarified by the domestic industry in their submissions and mentioned in this finding. As clarified by the domestic industry, they have imported components only and not fully built or ready to use chip-on-board in COB substrate based flash drivers and after undertaking elaborate processing manufactured and supplied the COB based flash drives.

- xvi. As regards the contention that mere capacity to manufacture is not the criteria in an anti-dumping investigation, because in such case no injury would have caused to non-existing goods, the Authority notes that under the Anti-dumping Rules, it is not mandatory for the domestic industry to manufacture all the types/varieties of technically and commercially substitutable goods. If the domestic industry produces one type or variety and has the capacity to manufacture the other technically and commercially substitutable types/varieties, then excluding such types/varieties of goods from the purview of anti-dumping duties would defeat the entire purpose of imposing anti-dumping duties. Even if the domestic industry does not have capacity for manufacturing all the types/varieties of technically and commercially substitutable goods, such goods cannot be excluded from the purview of the duty, without creating a scope for continued dumping and injury to the domestic industry.
- xvii. As regards the contention that 1 GB pen-drive cannot be clubbed together with a 132 GB pen drive and arrive at one common determination, the Authority notes that relevant determinations have been made on the weighted average basis taking in to considerations the capacity of the subject goods produced and supplied by the domestic industry during the POI. As regards methodology, the Authority notes that the same have been adopted in line with the rules and practice in the DGAD.
- xviii. As regards the contention of Sony that complete responses have been provided and the Authority must compute an individual dumping margin for Sony based on Sony's export price of the subject goods to India, the Authority notes that the reasons for which individual margins have not been granted to the Sony group companies are well explained in the relevant paras of this finding. Nevertheless, at the cost of repetition, it is noted that despite opportunities provided, all the parties involved in the value chain did not file EQ response with complete information concerning production and sale of the subject goods exported to India during the POI. In view of this position, the Authority did not grant individual margins to the Sony group companies.
- xix. As regards the contention of Sony that India is not an appropriate analogue country for purposes of construction of normal value for China, the Authority notes that the methodology adopted for the purpose in the relevant paras of this finding is well explained and self explanatory. Nevertheless, the Authority notes once again that for determination of normal value based on third country cost and prices,

the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies have made any claim with regard to an appropriate market economy third country. Considering the above situation, the Authority determined the Normal value for China PR on available facts basis in terms of Para 7 of Annexure 1 to the Anti-dumping Rules.

- xx. As regards PNY'S contention that their export price and normal value information cannot be rejected on the ground that parties involved in the value chain have not filed EQ response, the Authority notes that the reasons for non granting of individual margins to PNY is well explained in the relevant paras of this finding and the same are self explanatory. Nevertheless, it is once again noted that despite opportunities provided, all the parties involved in the value chain did not file EQ response with complete information concerning production and sale of the subject goods exported to India during the POI. In view of this position, the Authority did not grant individual margins to PNY.
- xxi. As regards PNY'S contention DGAD has not considered the other domestic producers of subject goods namely Amkette and Om Nanotech as domestic industry, the Authority notes that the reasons for the same are well explained in the relevant paras of this finding and are self explanatory. Nevertheless, the Authority notes once again that post initiation the said companies were requested to provide required information, but no response was received from them. In view of this position, Amkette and Om Nanotech Pvt. Ltd cannot be considered as constituting domestic industry under the Rules. Therefore, in terms of the Rules, the Authority has considered Moser Baer India Ltd as domestic industry.
- xxii. As regards the contention of SanDisk that import volumes are irrelevant for determination of non-injurious price, it is noted that Authority has determined the underselling effect GB-wise and thereafter computed the weighted average underselling effect for which the import volume of each GB of product under consideration is required.
- xxiii. As regards the contention of the domestic industry that the anti-dumping duty may be recommended in terms of fixed amount, expressed in US\$ term, the Authority notes that the form and quantum

of duty as appropriate, considering the facts of the present case and rules in this regard, have been recommended in the relevant paras of this finding.

CONCLUSIONS:

153. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the Authority concludes that:
- a. The product under consideration has been exported to India from subject countries below its normal value, thus resulting in dumping of the product.
 - b. The domestic industry has suffered material injury due to dumping of the product under consideration.
 - c. The material injury has been caused by the dumped imports of the subject goods originating in or exported from the subject countries.

T. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

154. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers. Imposition of anti-dumping duties would not deprive the Indian buyers of subject goods who would need access to subject goods manufactured in India and also global market to take the maximum benefits of continued technological and cost effective innovations. Ensuring a competitive market for producers of subject goods in India will help India to develop a strong and effective domestic manufacturing base for subject goods in India so that Indian consumers can benefit both from the domestic as well as global market of the subject goods.
155. It is recognized that the imposition of anti-dumping duties may affect the price of the subject goods from the subject countries. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic

industry and help maintain availability of wider choice to the consumers of the subject goods.

U. RECOMMENDATIONS

156. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted investigation into dumping, injury and causal links in terms of the Anti-dumping Rules laid down and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti-dumping duty is required to offset dumping and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duties on the imports of the subject goods from the subject countries in the form and manner described hereunder.
157. 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 the margin of injury, so as to remove the injury to the domestic industry. Accordingly, the definitive anti-dumping duty equal to the amount mentioned in Col 8 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of the subject goods, originating in or exported from the subject countries.

Duty Table

Sl. No	Tariff * Item	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	85235100	USB Flash Drives	China PR	China PR	Any	Any	3.12	Per/Piece	USD
2.	do	do	China PR	Any country other than China PR	Any	Any	3.12	Per/Piece	USD
3.	do	do	Any country other than China PR	China PR	Any	Any	3.12	Per/Piece	USD
4	do	do	Chinese Taipei	Chinese Taipei	Any	Any	3.06	Per/Piece	USD
5	do	do	Chinese Taipei	Any country other than Chinese Taipei	Any	Any	3.06	Per/Piece	USD
6	do	do	Any country other than Chinese Taipei	Chinese Taipei	Any	Any	3.06	Per/Piece	USD

* The imports of the subject goods are also reported under the following other tariff heads. However, Customs classification is indicative only and not binding on the scope of the investigation:

84713090, 84717020, 84717030, 84717070, 84717060, 84717090, 84718000, 84719000, 84733030, 84733099, 85044030, 85049090, 85176290, 85177010, 85198940, 85198990, 85258090, 85232910, 85234190, 85234990, 85235100, 85235220, 85235290, 85235990, 85238090, 85389000, 85423200, 85439000.

Note: It is clarified that only the imports of the product under consideration as elaborated in the paragraphs relating to product under consideration in the present findings and as specified in column 3 above shall attract anti-dumping duty.

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

(J. K. Dadoo)
Designated Authority