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**F. No.6/6/2020-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 5, Parliament Street, New Delhi 110001**

Dated 28th January, 2021

NOTIFICATION

FINAL FINDINGS

Case No. ADD-(OI) 05/2020

Subject: Anti-dumping investigation concerning imports of "Black Toner in powder form" originating in or exported from China PR, Malaysia and Taiwan.

A. BACKGROUND OF THE CASE

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.

1. M/S Pure Toners and Developers Pvt. Ltd and M/S Indian Toners and Developers Ltd (hereinafter referred to as the "Applicants") have filed an application before the Designated Authority (hereinafter also referred to as the "Authority") on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the "Act") and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 as amended from time to time (hereinafter also referred to as the "Rules") for imposition of Anti-dumping Duty concerning imports of " Black Toner in powder form " (hereinafter also referred to as "subject goods" or "product under consideration" or "PUC" or "Black Toner"), originating in or exported from China PR, Malaysia and Taiwan (hereinafter also referred to as the "subject countries").
2. The Authority, on the basis of prima facie evidence, issued a public notice vide Notification No. 6/6/2020 - DGTR dated 10th February, 2020. published in the Gazette of India Extraordinary, initiating the subject investigation in accordance with Section 9A of the Act read with Rule 5 of the Rules to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject countries, and to recommend the amount of anti-dumping duty, which if levied, would remove the alleged injury to the Domestic Industry.

3. In pursuant to the Rule 12 of the Rules, Authority issued its Preliminary Finding, vide Notification No 6/6/2020-DGTR, dated 18th June, 2020, recommending imposition of provisional Anti-dumping duty on the imports of the subject goods originating in or exported from China PR, Malaysia and Taiwan. The provisional anti-dumping duty was imposed by Ministry of finance *vide* notification number 22/2020-Customs (ADD) dated 10th August, 2020.

B. PROCEDURE

4. The procedure described herein below has been followed with regard to the subject investigation:
 - a) The Authority notified the Embassies of the Subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
 - b) The Authority issued a public notice dated 10th February, 2020 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods from the subject countries.
 - c) The Authority sent a copy of the initiation notification to the Embassies of the subject countries in India, known producers/exporters from the subject countries and known importers/users as per the addresses made available by the Applicants and requested them to make their views known, in writing, within the prescribed time limit.
 - d) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of the subject countries in India in accordance with Rule 6(3) of the Rules.
 - e) The Embassies of the subject countries in India were also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from their countries.
 - f) The Authority sent Exporter's questionnaires to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the Rules:
 - i. Hubei Far East, China PR
 - ii. Wuhan Point Role, China PR
 - iii. Handan Hanguang, China PR
 - iv. wuxi jiateng, China PR
 - v. Dinglong, China PR
 - vi. Nanjing Teshine, China PR
 - vii. Comet, China PR
 - viii. Wuhan Techwin Toner and Developer Limited, China PR
 - ix. Jadi, Malaysia

x. TI, Taiwan

g) The Authority sent Importer's Questionnaire to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:

- i. Vedica Computer Pvt. Ltd.
- ii. Datalink industrial corporation
- iii. Atul Automation Private Ltd
- iv. Cartridgewala.com
- v. Copytron Technology
- vi. Indrayani Sales Pvt. Ltd.
- vii. Best Mega international
- viii. Sumanglam international private limited
- ix. Rank office automation P Ltd.
- x. Image Star Print Solutions Pvt Ltd

h) The Authority, upon request, granted multiple extensions, to file Exporter Questionnaire Response (EQR). . The last date to file the questionnaire response was 10th June, 2020. However, while granting extension it was clearly stated the Authority reserved the right to grant interim relief to the domestic industry.

i) In response, the following exporters/producers from the subject countries filed exporter's questionnaire response:

China PR

- a. Tianjin zhonghuan tcoa electronics co ltd
- b. HG Technologies Co. Ltd
- c. Handan Hanguang OA Toner Co., Ltd

Taiwan

- a. Trend tone imagine Inc

j) In response, the following importers filed importer's questionnaire response/legal submissions.

- a. Indrayani sales Pvt. Ltd
- b. Alphabet imaging technologies LLP
- c. Indigo prints smart Pvt Ltd
- d. Datalink industries corporation
- e. Sumanglam international
- f. Sumanglam international Pvt.Ltd
- g. Royal ribbons & shells Pvt. Ltd
- h. Image star print solutions Pvt. Ltd

- k) The following associations have also filed injury submissions.
- a) China Culture & Office Equipment Association (CCOEA) (Exporters' Association)
 - b) Computer media dealer association. (Importer's Association)
- l) The Authority made available non-confidential version of the application as well as updated data to the interested parties on their request.
- m) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has relied upon the DGCI&S data for computation of the volume of imports and its analysis after due examination of the transactions.
- n) The Non-Injurious Price (NIP) has been determined based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the Domestic Industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- o) The Period of Investigation for the purpose of the present anti-dumping investigation is from 1st April, 2019 to 31st December, 2019 (9 Months). The injury investigation period has, however, been considered as the period from April 2016 - March 2017, April 2017- March 2018, April 2018 - March 2019 and the POI.
- p) The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority, in these Final Findings.
- n) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- o) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the Final Findings on the basis of the facts available.
- p) Authority issued the Preliminary Findings on 18th June, 2020. As recorded in the Preliminary Finding, the Authority invited comments on the same and the relevant views of the interested parties on the preliminary determination has been considered appropriately for the purpose of these Final Findings.

- q) In accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally through a digital video hearing held on 6th January, 2021. All the registered interested parties who had attended the oral hearing were also provided an opportunity to file written submissions, followed by rejoinders, if any.
- r) Desk verification was carried out by the Authority to verify the information filed by the domestic industry and other interested parties. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of these Final Findings.
- s) “****” In these Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- t) In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 22nd January, 2021 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- u) The exchange rate adopted by the Authority for the subject investigation is US\$= Rs. 71.22.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 5. At the stage of initiation, the product under consideration was defined as:
 - a) The product under consideration is Black Toner in powder form. Toner is used in laser printers, photocopiers, digital multifunction devices (MFD), etc. to form the printed text and images on the paper.
 - b) The PUC is classified under the tariff custom classification 37079010. The PUC, however, has been also imported under the code 37079090. The customs classification is only indicative and is not binding on the scope of the product under consideration.
 - c) The following Toners are not covered within the scope of the investigation:
 - i. Color Toner
 - ii. MICR Toner (Specialized Toner used for printing in Cheques)
 - iii. Toners imported for the use by Original Equipment Manufacturers of Printing Equipment.
 - iv. Toner in Cartridges
 - v. Toner in liquid form
- 6. In its Preliminary Findings, the Authority provisionally held that subject goods being imported from subject countries and manufactured by domestic industry are like articles and

accordingly provisional duties were recommended on all subject goods as per the PUC defined in the initiation. However, arguments have been placed by various interested parties on the scope of the product under consideration. Therefore, for the purpose of final determination the scope of PUC has been examined as under taking into account all material facts placed before the Authority:

Submissions made by the Domestic Industry

7. The submissions made by the Domestic Industry with regard to product under consideration and like article are as follows:
 - a) The Product under Consideration in the present application is "Black Toner in powder form". It is used in laser printers, photocopiers, digital multifunction devices (MED), etc. to form the printed text and images on the paper.
 - b) The following Toners are not covered in the scope of the investigation:
 - i. Color Toner
 - ii. MICR Toner (Specialized Toner used for printing in Cheques)
 - iii. Toners imported for the use by Original Equipment Manufacturers of Printing Equipment.
 - iv. Toner in Cartridges
 - v. Toner in liquid form
 - c) The product under consideration is classified under Chapter Heading 37 of the Customs Tariff Act. The classification at the 8-digit level is 37079010. However, it has been noted from the import data that the subject goods were also imported under 37079090 HS code .
 - d) There is no difference in product produced by the Applicants and that exported from the subject countries. Certain interested parties have claimed exclusion of certain grades of the subject goods from the product under consideration without specifying the grounds on which such exclusion has been sought or without providing any basis or evidences for such claims. Accordingly, the Domestic Industry submits that since no relevant information/evidence has been supplied by the concerned parties, their claims cannot be entertained at this stage of the investigations.
8. The Domestic Industry manufactures and sells all other products for which exclusion have been sought by the interested parties except the products already excluded in the initiation notification. The various products listed by the interested parties as not being produced or sold by the Domestic Industry are merely different in terms of the nomenclature on the basis of respective brands. The interested parties have failed to provide even a semblance of evidence to support their contention that the said products or products technically and commercially substitutable to such products are not being manufactured by the Domestic Industry. Further, the interested parties have failed to provide any technical specifications or prove any difference in end-use that may render the products liable for exclusion. The grounds of exclusion submitted by the interested parties are not only contrary to the facts on record but also against the settled jurisprudence available on the subject.

9. The interested parties have also claimed exclusion of certain grades on the ground of differences in quality and production process. The argument of quality difference is a bogus one as the products produced by the Domestic Industry are of the highest standards and found to be totally acceptable in the Indian market. Without prejudice, it is submitted that the production process and quality, in any case, are not relevant parameters for defining Product under Consideration in an anti-dumping duty investigation. The Hon'ble CESTAT in the case of Automotive Tyre Manufacturers' Association (ATMA) vs. Designated Authority clearly stated that as under:

“5.....[T]he submissions that imported goods are manufactured through a different process and that the imported goods differ in quality also do not invalidate the findings. Process of manufacture is not a relevant factor under anti-dumping law. Quality difference is also not material. The imported goods and domestically produced goods have the same use and have been correctly held to be 'like article' by the Designated Authority. In these facts and circumstances the submissions made in these appeals have no merit. The appeals fail and are rejected.” [Emphasis Added]

10. Some of the interested parties have argued the need for adopting PCN methodology in the present investigation. In this regard, the Domestic Industry submits that the interested parties have failed to submit any evidence establishing that there is “significant” cost and price variation amongst various grades. The importers have relied upon an invoice of the Domestic Industry which shows 15-18% difference in the selling price of two variants. In this context, it may be noted that the selling price alone cannot be considered as sufficient reason to require the adoption of PCN methodology. It is submitted that while relying upon a single invoice of the Domestic Industry, such importers failed to consider the following critical factors which might justify need for adoption of a PCN methodology:
- a. Significant difference in cost of two grades;
 - b. Difference in selling prices of two variants on the basis of quantity (the lower priced goods are bought in larger quantity to the tune of 300% from the higher priced item);
 - c. The inventory cost of such variants (Fast moving items have lower storage/inventory cost and thus are always cheaper than slow moving/specialized variants).

11. There is no significant price or cost difference between the different variants of the Product under Consideration which would necessitate the adoption of the PCN-wise comparison.

Submissions made by other Interested Parties

12. The PUC as defined cover a wide range of *inter se* product types which vary significantly in terms of cost and price. To account for such differences in product types, PCN-wise comparison of types of PUC is very essential for the determination of dumping and injury margin in the present case. The types of PUC which are either not produced by the DI and or the types for which no direct substitutes are available should be excluded from the scope of PUC.

13. Black toner produced by the domestic industry is not produced using advance technology and is inferior in quality.

Examination by the Authority

14. The submissions made by the Domestic Industry and other interested parties with regard to the PUC related issues have been examined and addressed as under.

- a) It has been noted that certain interested parties have claimed exclusion of certain grades / types of the subject goods from the product under consideration without specifying the grounds on which such exclusion may be considered as well as without providing any basis or evidences for such claims. Therefore, the Authority does not find any merit in their claims for exclusion.
- b) With regard to the claim of the interested parties regarding exclusion of certain grades from the scope of the investigation on account of the difference in quality and production process, it is noted that difference in quality and production process are not the criterion for exclusion of any grade of the product. . The subject goods produced by the domestic industry and imported from the subject countries have the same end use. The Hon'ble CESTAT in the case of Automotive Tyre Manufacturers' Association (ATMA) vs. Designated Authority had held that the process of manufacture and quality are not relevant factors under anti-dumping law and had accordingly upheld the decision of the Designated Authority treating the imported goods and domestically produced goods having the same use as 'like article'.
- c) Some of the interested parties have requested to adopt the PCN methodology. The Authority notes that the interested parties have not provided evidences to show significant variation between the cost and prices among various grades / types. The PCN methodology is required only in cases where there are multiple grades and forms of the PUC/like article and there is a substantial cost and price difference between these grades and forms. Accordingly, after examining the contentions of various interested parties, it has been found appropriate not to carry out PCN wise analysis in the present investigation.
- d) From the information available on record, it has been noted that the product under consideration produced by the domestic industry is like article to the goods imported from the subject countries. Product under consideration produced by the domestic industry and imported from the subject countries are comparable in terms of physical & chemical properties, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. It is noted that the imported and the domestically sold products are technically and commercially substitutable, and the consumers are using the two interchangeably.
- e) The product under consideration (PUC) in the present investigation is "Black Toner in powder form".
- f) The following types of Toners are not covered within the scope of the investigation:
- i. Color Toner

- ii. MICR Toner (Specialized Toner used for printing in Cheques)
 - iii. Toners imported for the use by Original Equipment Manufacturers of Printing Equipment.
 - iv. Toner in Cartridges
 - v. Toner in liquid form
- c) PUC is classifiable under Chapter Heading 37 of the Customs Tariff Act. The classification at the 8-digit level is 37079010. However, it is noted that the subject goods have been also imported under 37079090 HS code. The customs classification is indicative only and is in no way binding on the scope of the present investigation.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

Submissions made by the Domestic Industry

15. The submissions made by the Domestic Industry during the course of the investigation with regard to scope of Domestic Industry & standing are as follows:
- a) The Applicants, M/S Pure Toners and Developers Pvt. Ltd and M/s Indian Toners and Developers Ltd., are producers of the subject goods in India. There is no other producer of the subject goods in India.
 - b) The Applicants have not imported the product under consideration from subject countries or any exporter from the subject countries.
 - c) The Applicants account for 100% of the total Indian production of PUC. The Applicants thus hold a major proportion of total Indian production of the PUC and accordingly, satisfy the requirement of standing and constitute 'Domestic Industry' in terms of Rule 2(b) read with Rule 5(3) of the Rules.
 - d) The Domestic Industry has duly filed the declaration with detailed information along with its Original Application, where it has been stated that the related party of M/s Pure Toners and Developers Pvt. Ltd. has imported very miniscule and insignificant quantities of the subject goods from China PR. The absolute discretion to consider a domestic producer as an eligible Domestic Industry or not in terms of Rule 2(b) rests with the Authority in accordance with the statutorily language of Rule 2(b) as well as the decision of the Hon'ble Madras High Court in the case of Nirma Ltd. vs. Union of India. Therefore, the contentions raised by the interested parties in this regard are devoid of any factual or legal basis, and thus, are to be rejected.
 - e) The eligibility or ineligibility of Pure Toners in any case would not have any material difference in the facts of the present case. Admittedly, there are only two producers of the subject goods in the country. Since both the domestic producers are applicants in the present investigation, the arguments advanced by the interested parties shall not have any material effect on the case either way.
 - f) Some Interested Parties have raised the contention that since there is a common director for two companies, viz. Pure Toners and M/s Copy Star India Ltd., the latter is legally controlled by the former. Such a claim does not have any implication in the present

investigation as the relationship between Pure Toners and M/s Copy Star India Ltd. is not even in contention in the present investigation. It is reiterated that Pure Toners has already disclosed during its application that its related party has imported miniscule quantities of Product under Consideration. Therefore, these submissions of the interested parties are immaterial to the case as they do not pertain to the facts in issue. As a matter of fact, the two parties are not even related in the context of the Anti-dumping Rules, jurisprudence and the practices followed by the Authority. The applicant had mentioned the fact of miniscule imports by a party having a common director, only as a matter of abundant precaution and full and fair disclosure.

- g) The interested parties have claimed that there are other Indian producers engaged in production of the subject goods in India. However, interested parties have not adduced any evidence to show that any of the producers have manufactured or sold the subject goods in the domestic market during the POI. The Domestic Industry would like to point out the extent of misleading statements submitted by the parties. Some parties have mentioned that Sheishin Advanced Material Technologies in Hyderabad is another producer in India but the Domestic Industry has found that the said company is involved in mining and quarrying as per information available in public domain. Similarly, the parties had also listed Navran Advanced Nanotechnology Development International Private limited, Dhamandri, Una, Himachal Pradesh, which manufactures and exports the chemical color toners, a product that has been excluded from the purview of the instant investigation from the stage of application itself.

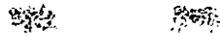
Submission of other interested parties

16. The Petitioner, Pure Toners and Developers Ltd., admitted that a related company of them namely M/s copy star India ltd had imported "insignificant" volume of subject goods from subject country and this claim needs strict scrutiny.
17. Detailed examination of share of such imports in subject imports into India, production by the concerned petitioner and also demand in India should be made to ascertain the significance of such imports in a better way and an examination of such imports *qua* the total imports into India alone shall be misleading.
18. There are other Indian producers engaged in production of the subject goods in India.

Examination by the Authority

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

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



20. It is noted that the application has been filed by M/S Pure Toners and Developers Pvt. Ltd and M/S Indian Toners and Developers Ltd. The Applicants have informed that currently there is no other producer of the product under consideration in India.
21. With regard to the claim of the interested parties that M/s Pure Toners cannot be considered as an eligible Domestic Industry in terms of Rule 2(b) as one of their related parties have imported the Product under Consideration from the subject country, the Authority notes that the domestic industry has provided details regarding the same in its application. The importer linked with M/S Pure Toners and Developers Pvt. Ltd had imported miniscule quantities of subject goods from a subject country (***)% of imports from subject countries and ***)% of domestic industry's production). Therefore, after taking into account the miniscule quantity of imports, the Authority has decided to consider M/S Pure Toners and Developers Pvt. Ltd as an eligible producer to be considered as Domestic Industry in terms of Rule 2(b).
22. Some of the interested parties have alleged that there are other Indian producers like Sheishin Advanced Material Technologies, Navran Advanced Nanotechnology Development International Private limited, who are also engaged in production of the subject goods in India. In this context, it has been noted that none of the interested parties have provided evidences to substantiate their claim. Further, the domestic industry has provided evidences to show that Sheishin Advanced Material Technologies is engaged in mining and quarrying activity while Navran Advanced Nanotechnology Development International Private limited manufactures and exports Color Toner, which has been excluded from the scope of the subject goods ab-initio.
23. The Applicants account for 100% of the total Indian production and constitute a major proportion. It is noted that the Applicants have not imported the product under consideration and are not related to any importer in India or any exporter from the subject countries.
24. Accordingly, the Authority holds that the Applicants satisfy the standing requirement and constitute the Domestic Industry in terms of Rule 2(b) and Rule 5(3) of the Rules.

E. MISCELLANEOUS SUBMISSIONS

Submissions made by the Domestic Industry

25. The Domestic Industry has argued that the China Culture & Office Equipment Association (CCOEA) cannot be considered as an interested party in terms of Rule 2(c) of the anti-dumping Rules. It is clearly mentioned in Rule 2(c) that only that association can be considered as "interested party", where the majority of its members are producers, exporters or importers of "such an article". Therefore, an association can be permitted to participate as an interested party in the investigations only and only if it is proved to the satisfaction of the Authority that the majority of the members of such association are either importers or producers of subject goods. It is pertinent to note that the majority test is to be applied in the context of total membership of the respective association.
26. CCOEA has not presented any evidence demonstrating that they fulfilled the precondition prescribed in Rule 2(c)(i) to be considered as an interested party. As per the limited information available in the public domain, majority members of CCOEA are not the

producer / exporter of the product under consideration. Further, no proof or justification has been presented by such party to show its eligibility. In the absence of any such plea by the aforesaid association, their status as interested party and their contention cannot be accepted. It is pertinent to note that as per the website of the said association, they have more than 200 group members while they have filed authorization only on behalf of 6 of their members. This clearly shows that the said association is not eligible to be treated as an interested party in terms of Rules 2(c)(i) of the Anti-dumping Rules.

27. The Domestic Industry had intimated the Authority *vide* email dated 07.04.2020 inviting Authority's attention to the fact that the NCV of the application has been sought by China Culture & Office Equipment Association (CCOEA) without satisfying the Authority regarding its eligibility as an interested party in accordance with Rule 2(c)(i).
28. The Domestic Industry reiterates that the said association has not even made any averment, let alone evidence, to prove that they qualify as an interested party in terms of the Rule cited above. They have not even bothered to submit complete lists of all their members so as to enable the Hon'ble Authority to ascertain their status as an interested party despite the fact that the responding association as well as their legal representatives are well aware of the requirement contained in the Anti-Dumping Rules. In view of the above, we request the Designated Authority not to take into account the submissions of the said association on record as they have failed to provide the list/information pertaining to all their members and fully justify their claim to be an interested party in terms of Rule 2(c)(i) of the Anti-dumping Rules.
29. The following interested parties (importers) have not provided the response as per the NCV format prescribed by the Authority. Accordingly, responses of these interested parties (importers) may not be allowed.
 - a) M/s Data Link Industrial Corporation
 - b) M/s Sumangalam International
 - c) M/s Image Star Print Solutions Pvt Ltd
 - d) M/s Alphabet Imaging Technologies LLP
 - e) M/S Royal Ribbons & Shells Pvt Ltd
 - f) M/s Indigo Prints Smart Pvt Ltd
 - g) Sumangalam International Pvt Ltd
30. M/s Tianjin Synthetic Material Research Institute Co. Ltd. (China) has not filed their exporter's questionnaire response. Therefore, M/s Tianjin Synthetic Material Research Institute Co. Ltd. (China) cannot be considered as a cooperating exporter.
31. The responding producers/exporters have miserably failed to adhere to the provisions of Rule 7 read with the guidelines provided under various Trade Notices issued by the Authority. Further, the exporters have claimed excessive confidentiality without any proper justification. Accordingly, we request the Hon'ble Designated Authority to reject the response of the interested parties in the absence of a proper non-confidential version of their responses.
32. The interested parties have argued that the consideration of 9 months period as POI instead of 12 months is erroneous. It is submitted that there is nothing in law which prevents the

Authority from having less than 12 months as POI. The Domestic Industry proposed 6 months as POI in view of the intensified dumping by the subject countries in the said period. However, the Authority, in view to have a larger period for consideration of dumping, injury and causal link decided to consider 9 months period as POI.

33. It is also submitted that the present investigation was initiated on 10.02.2020. Therefore, the period ending on 31.12.2020 was the most recent period available to the Authority while initiating the investigation. The period preceding the said period is in any case covered in the injury investigation period. The submissions of the interested parties regarding the requirement to give reasoning for considering less than 12 months POI is also invalid in view of the fact that the amended law referred to by the interested parties came into existence after the initiation of the present investigation.
34. The interested parties have themselves admitted that there was a delay in filing complete questionnaire responses within the prescribed time and had sought extension of time for the same. Multiple extensions were requested by the interested parties and granted by the Authority to file the Exporters Questionnaire Responses.
35. It is pertinent to note that the Authority, in the extension notice dated 20.05.2020 had explicitly mentioned that "the Authority reserves the right to grant interim relief to the Domestic Industry". However, no party objected to the same. The last extended date for filing the questionnaire response was 10.06.2020. The Preliminary Findings was issued by the Authority on 18.06.2020. It was not possible for the Authority to examine all questionnaire responses of the interested parties in the given window of 7 days. Therefore, the issuance of the Preliminary Findings without taking into account all the responses of the interested parties filed near the finally extended deadline was in accordance with the principles of fair play.
36. It has been explicitly noted in para 28 of the preliminary finding that no exporters questionnaire response has been received from Malaysia and Taiwan. Therefore, the submission of questionnaire response of Trend Tone, Taiwan appears to be at belated stage of the investigation. Accordingly, the Domestic Industry requests the Authority to not consider Trend Tone Imagine Inc., Taiwan (Exporter) as cooperative exporter and refuse any individual dumping margin to the said exporter.
37. Para 28 of the preliminary findings clearly mentions that discrepancies have been noticed in the questionnaire responses filed by the Chinese producers / exporters. Accordingly, the Domestic Industry requests the Authority to not consider the deficient responses filed by the Chinese exporters and reject them outright. The Domestic Industry submits that the said exporters cannot be allowed trawl the investigation by filing deficient questionnaire response and supplementing it with further data/information at later stage of the investigation.
38. Any questionnaire responses filed by the exporters from the subject countries after the expiry of the time prescribed for filing the response should not be considered by the Authority and such exporters should be treated as non-cooperative.
39. As regards the need for Preliminary Findings, the Domestic Industry submitted that the severity of the injury suffered by the Domestic Industry on account of dumped imports had

threatened the very survival of the Industry as can be seen from the serious injury reflected in the injury parameters, and therefore, required immediate measures by the Authority. The Domestic Industry has specifically requested for imposition of provisional duties with detailed reasoning in its application. Accordingly, the Authority has rightly proceeded with the investigation and issued the Preliminary Findings after thoroughly examining the information clearly depicting the grave injury suffered by the Domestic Industry due to the dumped imports of the subject goods, as this was a fit case for imposition of provisional duties.

40. The Domestic Industry apprehends that the exporters from the subject countries have included the excluded products (color toner, MICR toner etc.) in their responses to increase their landed value and export price. The Domestic Industry requested to verify the value and quantity of exports made by the exporters with the official transaction-wise import data sourced from DG Systems in order to ensure that the Domestic Industry is not deprived of the rightful protection on account of the incorrect reporting of the exporters. The said practice would be in line with the approach adopted by the Authority in during the anti-dumping Clear Float Glass (F. No. 6/15/2019-DGTR dated 20.8.2020) against Malaysia, wherein upon request, the Authority cross-checked the prices of the exporters with DG System data.

Submission of other interested parties

41. The Authority issued the Provisional Finding in the matter on 18.6.2020, which was later notified by the MOF, without considering the response timely filed by the above mentioned. The proceedings so far have been procedurally unfair to the opposing parties and the rights of the parties have been highly compromised as the provisional duties were recommended without considering the submissions by the opposing parties.
42. The performance of the DI was very stable and there was no emergency situation to recommend PF by ignoring opposing views and lack of merit of the present duties is further demonstrated in this submission.
43. The Preliminary Findings was issued in haste and the notification imposing interim duties also shows the arbitrariness.
44. The Preliminary findings fails to address the issue of the inability of the petitioners to fulfil the Indian demand by supplying the desired product.
45. POI should be twelve months. In case, the Authority is considering less or more period, it shall provide proper justification to show the justification and rationale behind such consideration and modification.
46. Any analysis of performance of the domestic industry for a short period does not reflect the real performance of the company.
47. The NCV of the petition violated Rule 7 by not providing sufficient information, but the Petition claimed confidentiality over a stated non-confidential declaration without any justification. The details on computation of normal value were deliberately not shared. Even indexed data and parameters for computation of Normal value including cost of electricity,

labor, raw materials etc. nor has provided an indexed data or summarization. Further, the petitioners have not provided any information pertaining to utilities, depreciation, manufacturing overheads, salary and wages, administrative overheads etc. and information treated in confidence without being accompanied by non-confidential summary.

Examination by the Authority

48. With regard to the POI, it is noted that the domestic industry had proposed 6 months POI (April 2019 to September 2019). However, the Authority has extended the same to consider the recent and larger period till December 2019. The Authority considered 9 months POI considering the intensified dumping and the fact that the domestic industry belongs to the MSME sector.
49. On the issue of filing on deficient response, it is noted that the law firm representing importers referred in serial no (b) to (h) under para 4(j) has not filed complete response as per the importers' questionnaire response format prescribed by the Authority. It has been noted that the said importers have not filed complete transaction wise details of imports such as name of the supplier, invoice no, invoice date etc. As regards non-filing of the response by Tianjin Synthetic Material Research Institute Co. Ltd. (China), it is noted that Tianjin Synthetic has not filed the EQR. Therefore, said importers and Tianjin Synthetic Material Research Institute Co. Ltd. have been treated as non-cooperative.
50. With regard to confidentiality of information, Rule 7 of the Rules provide as follows:
“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.
(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.
(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”
51. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidence submitted by various interested

parties by directing the interested parties to share the non-confidential version of submissions with each other through e-mails. The information related to imports, performance parameters and injury parameters of domestic industry have been made available in the public file. Business sensitive information has been kept confidential as per practice. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

52. The Authority has considered the claims of confidentiality made by the Applicants and the opposing interested parties and on being satisfied about the same, the authority has allowed the claim on confidentiality. Due to Covid 19 pandemic, the Authority directed all the interested parties to share the non-confidential version of submissions made by each interested party with other interested parties through e-mail.
53. With regard to the issue raised by the some interested parties in the context of the issuance of the preliminary findings, it is noted that the domestic industry had specifically requested for imposition of provisional duties with detailed reasoning in its application and that the Authority recommended imposition of provisional duty to grant interim relief to the domestic industry strictly on the merit of the case It is further noted that while granting extensions for filing Questionnaire response, it was categorically mentioned in the notice of extension dated 20.05.2020 that the Authority reserved the right to grant interim relief to the Domestic Industry...
54. On the issue of the eligibility of CCOEA, the Authority notes that in terms of Rule 2(c)(i) only a business association a majority of the members of which are producers, exporters or importers of the subject goods can be considered as an interested party. The relevant excerpts of Rule 2(c)(i) are reproduced below.

“(c) “interested party” includes -

- (i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article:....”*

55. It is noted that CCOEA has filed the authorisation letters of only six producers while from the information available on their website it is clear that they have more than 200 members. However, despite the above, the Authority has appropriately dealt with the submissions made by CCOEA.

F. MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

Submissions by the Domestic Industry

56. The following submissions have been made by the Domestic Industry:

Normal Value for China PR

57. China PR has to be presumed to be a non-market economy country in terms of Para 8 of Annexure I of the Anti-dumping Rules, as it has been treated as a non-market economy country for purposes of plethora of anti-dumping investigations by the Designated Authority or also by other competent authorities of WTO member countries during the preceding three years unless the concerned firms / producers / exporters are able to rebut the said presumption based on the criteria laid down in Para 8(3).
58. The significant extent of continued government intervention in certain important sectors of the Chinese economy warrants maintaining China's designation as a Non-Market Economy country. It is a known fact that China's economy is controlled by the state forces and there is a significant interference and control of the state machinery in the country's economy. The grant of Market Economy status under China's accession to the WTO is not automated but contingent upon China's compliance with the preconditions mentioned in the Accession Protocol.
59. The Authority has rejected the MET claim of the exporters even in the most recent findings [See Final Findings No. 14/14/2014-DGAD, dated 8th April, 2017 in the case of Vitrified Tiles from China] on the ground of government-controlled exchange rate.
60. In view of above, the normal value for Chinese firms should be determined as per the provisions of Para 7 of the Annexure I. In terms of Para I, an appropriate third market economy country is required to be selected as the first alternative. However, domestic industry is not in a position to obtain any price details for the subject goods prevalent in any of the market economy third country as this information is not available in the public domain. The domestic industry has, therefore, determined the normal value for China PR on the basis of price actually paid or payable in India for the like product, duly adjusted, to include a reasonable profit margin. This methodology has been considered by the Designated Authority in the earlier investigations against China PR

Normal Value for Malaysia and Taiwan

61. The Applicant has claimed that they have tried to get the information of the domestic prices in Malaysia and Taiwan. However, the applicants were not in a position to obtain any price details for the subject goods in these countries as this information is not available in the public domain. Therefore, the domestic industry has determined the normal value for Malaysia and Taiwan on the basis of price actually paid or payable in India for the like product, duly adjusted, to include a reasonable profit margin.

Export Price for China PR, Malaysia and Taiwan

62. Export price from subject countries has been determined considering volume and value of imports for the proposed period of investigation as per transaction wise data collected from the DGCI&S. Adjustments have been made for ocean freight, marine insurance, port expenses, bank charges, commission, credit cost and inland freight.

Dumping Margin for China PR, Malaysia and Taiwan

63. Considering the normal value and export price as discussed above, the dumping margin has been determined. The dumping margins for the subject countries are above de minimis levels and significant.

Miscellaneous submissions

Submissions by the Domestic Industry

64. Some of the interested parties have questioned the methodology adopted by the domestic industry with respect to the computation of normal value and export price. The apprehensions raised by the interested parties with regard to the computation of normal value and export price are baseless. The interested parties have failed to appreciate that there is limited information available with the applicants at the time of initiation of the investigation. However, once the responses are received from the concerned exporters, the same can be relied upon by the Authority while making the final determination. It is pertinent to mention here that prior to the filing of the present case, the domestic industry made attempts to get information with respect to the prevailing prices of the subject goods in the concerned countries. However, despite sincere attempts, domestic industry was not able to get the prices of the subject goods in the subject countries.
65. As regards the submissions of the interested parties that there is no dumping of the subject goods in India, the domestic industry submitted that the data, information and evidences submitted by it at earlier stages as well as the Preliminary Findings issued by the Authority clearly demonstrates that there has been aggressive and significantly high dumping of the subject goods by the subject countries in the domestic market. Therefore, the contentions of the interested parties in this regard are misplaced and contrary to the facts and evidences on record.

Submissions by other interested parties

66. The decision of the Authority to pre-empt the responses of the responding parties for the PF have seriously prejudiced the dumping margin determination also among various other preliminary determinations and it is submitted that the dumping margin of 20-40% determined in case of China PR is apparently inflated and does not reflect any factual position.
67. The dumping margin as determined in the PF does not cover any PCN analysis. Any dumping margin for the PUC at average level shall not reflect the correct position as there is significant differences in cost and price of inter se product types.
68. The petitioners have mentioned incorrect values of various expenses incurred to arrive at export price at ex-factory level. Only the evidences of the ocean freight are enclosed in the petition as Annexure 17. All Other adjustments are done on an estimated basis, which are not correct and are totally unsupported by any evidence and therefore ought to be rejected. The adjusted ex-factory export value price of Black Toner from subject countries presented by the Petitioners in Annexure 10 of petition is therefore incorrect. Petitioner is required to disclose the information pertaining to basis of use of these estimations, to determine the export price, as this information is not confidential in nature. The importers claim that the

determination of export price is not supported by any evidence in violation of Rule 5(2) and 5(3).

Examination by the Authority

Market Economy Status

69. Article 15 of China's Accession Protocol in WTO provides as follows: "Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

"(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules

- (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
- (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

(b) In proceedings under Parts II, III and I" Q/" the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with Subparagraph (b) to the Committee on Subsidies and Countervailing Measures

(d) Once China has established under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event the provisions of subparagraph (a) (ii) shall expire 15

years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

70. It is noted that while, the provision contained in Article 15 (a) (ii) have expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession protocol require criterion stipulated in para 8 of the Annexure I of the India's Rules to be satisfied through the information/data to be provided in the supplementary questionnaire for claiming the market economy status. It is noted that since neither of the responding producer(s) and the exporter(s) from China PR have submitted supplementary questionnaire response, the normal value computation is required to be done as per provisions of para 7 of Annexure of the Rules.
71. Accordingly, the normal value for all the producers / exporters from China PR have been determined as below.

Normal Value for China PR

72. At the stage of initiation, the Authority, after evaluating the options under Para 7 to Annexure I of the Rules, had constructed Normal Value as Applicants claimed that they were not in a position to obtain any price details for the subject goods prevalent in any of the market economy third country. Upon initiation, the Authority advised the producers/exporters in China PR to respond to the notice of initiation and provide information relevant to determination of whether their data/information could be adopted for the purpose of normal value determination. The Authority sent copies of supplementary questionnaire to all the known producers/ exporters for providing relevant information in this regard. In absence of rebuttal of non-market economy presumption, it is considered appropriate to proceed in accordance with Para-7 of Annexure I to the Rules for determination of Normal Value for China PR. The Authority has, therefore, constructed Normal Value on the basis of cost of production in India based on the cost of the domestic industry duly adjusted with selling, general and administrative expenses with reasonable profit.

Normal Value for Malaysia

73. On account of non-submission of exporter's questionnaire response from Malaysia, the Authority has construed Normal Value on the basis of the cost of production in India based on the cost of the domestic industry duly adjusted with selling, general and administrative expenses with reasonable profit.

Normal Value for Taiwan

74. It is noted that producer namely Trend Tone imagine Inc. (TTI) has participated in the investigation from Taiwan. It has however been noted that TTI has reported only *** MT from its affiliated Chinese producer for export to India while as per DG System data, it has

exported *** MT of subject goods to India of Chinese origin. Accordingly, in view of the significant variation between the export quantities reported in Appendix 2 and DG System data, the Authority holds TTI as non-cooperative exporter.

75. In view of the above, the Authority has construed Normal Value on the basis of the cost of production in India based on the cost of the domestic industry duly adjusted with selling, general and administrative expenses with reasonable profit for TTI and all other producers from Taiwan.

Export Price for Tianjin Zhonghuan TCOA Electronics Co Ltd (TCOA)

76. In the questionnaire response filed by TCOA, the Authority has noted that the quantity of certain transactions has been provided in appendix 3A in a manner that amounted to misrepresentation of facts. Accordingly, the Authority holds TCOA as non-cooperative exporter.
77. In view of the above, the Authority has determined the export price on the basis of facts available information in terms of Rule 6(8) of the Rules. Adjustments have been made for ocean freight, marine insurance, port expenses, bank charges, commission, credit cost and inland freight.

Export Price for Handan Hanguang OA Toner Co., Ltd. alongwith its related producer HG Technologies Co.,Ltd.

78. The Authority notes that Handan Hanguang OA Toner Co., Ltd. along with its related Producer namely HG Technologies Co., Ltd., China PR have responded and have provided the information to determine the Net Export Price (NEP). It was observed that Handan Hanguang OA Toner Co., Ltd had exported *** MT of the subject goods to India during the POI, out of which *** MT were material produced by them and *** MT were materials produced by its related producer HG Technologies Co., Ltd and balance *** MT were produced by an unrelated producer namely Tianjin Zhonghuan Tianjia Electronic Co., Ltd. Whereas both Handan Hanguang OA Toner Co., Ltd. along with its Related Producer HG Technologies Co., Ltd has filed the EQR, the unrelated producer had not filed the EQR. In view of the above, the Authority holds to consider the export price based on the exports of *** MT only. The expenses on account of Ocean freight, Inland freight and others have been reduced from their CFR/FOB export prices. The weighted average net ex-factory export price, after adjustment of the above expenses, is determined as US\$ *** per MT.

Export Price for Malaysia

79. Exporter's questionnaire response has not been filed by any producer/ exporter from Malaysia. Accordingly, the export price has been determined in respect of the subject countries on the basis of facts available in terms of Rule 6(8) of the Rules. Adjustments have been made for ocean freight, marine insurance, port expenses, bank charges, commission, credit cost and inland freight.

Dumping Margin

80. Considering the normal value as constructed above, and export price as determined, the dumping margin determined for the subject countries are as follows:

| Country of origin and/or Export | Name of Producer | NV (USD/MT) | Ex-EP (USD/MT) | DM (USD/MT) | DM (%) | DM % range |
|---------------------------------|-----------------------------------|--------------|----------------|--------------|--------|------------|
| China PR | Handan Hanguang OA Toner Co., Ltd | *** | *** | *** | *** | 30-40 |
| China PR | Any other producer | *** | *** | *** | *** | 40-50 |
| Malaysia | Any producer | *** | *** | *** | *** | 50-60 |
| Taiwan | Any producer | *** | *** | *** | *** | 10-20 |

G. ASSESSMENT OF INJURY AND CAUSAL LINK

Submissions made by the Domestic Industry

81. The submissions made by Domestic Industry are as follows:

- a) The imports of the subject goods from the subject countries have increased significantly throughout the injury investigation period. The imports of the subject goods from the subject countries increased from 2,203 MT in the base year to 2,969 MT during the POI (A) i.e., there is an increase of 35%. The imports of the subject goods from the subject countries have also increased significantly in the POI (A) as compared to the year 2017-18 and 2018-19.
- b) The share of imports of the subject goods from the subject countries in the total imports is very high to the tune of 85.44% in the POI. It clearly indicates that the imports of the subject goods from the subject countries have been able to capture a significant market share in the domestic market due to aggressive dumping by the exporters from the subject countries. The significant rate of increase of dumped imports into India also indicates the likelihood of substantially increased importation. Therefore, there is also a clear case of threat of material injury to the domestic industry.
- c) The share of the imports of the subject goods from the subject countries in relation to the total demand in India has increased significantly in the POI as compared to the previous years. This clearly indicates that the domestic industry is suffering injury due to excessive dumping of the subject goods from the subject countries. Further, the significant rate of increase of dumped imports into India also indicates the likelihood of substantially increased importation and threat of material injury to the domestic industry.

- d) The share of imports of the subject goods from subject countries in relation to the production has increased significantly in the POI as compared to the preceding years. This clearly indicates that the domestic industry is suffering injury due to excessive dumping of the subject goods from the subject countries. The significant rate of increase of dumped imports into India also indicates the likelihood of substantially increased importation and threat of material injury to the domestic industry.
- e) The imports of the subject goods from subject countries have increased not only in absolute terms but have also increased in relation to total demand and domestic production.
- f) The average landed value of the subject countries declined significantly in the POI as compared to previous years, accordingly, selling price of the domestic industry also declined during the POI. On the contrary, the cost of the domestic industry has increased in the POI as compared to the base year as well as preceding years. The prices of the domestic industry have declined and have been suppressed on account of dumped imports of the subject goods from the subject countries. Accordingly, along with the current material injury, threat of material injury is also imminent.
- g) The demand in the domestic market has increased substantially in the POI (A) as compared to the base year. However, market share of the domestic industry in demand has declined in the POI (A). This clearly establishes the fact that imports have caused injury to the domestic industry with respect to market share also.
- h) The domestic industry has increased its capacity on account of increase in demand. The demand has significantly increased in the POI (A). However, the capacity utilization of the domestic industry has declined in the POI (A) on account of increase in dumped imports.
- i) The productivity per employee of the domestic industry declined during the POI (A) as compared to 2017-18 and 2018-19 on account of low value dumped imports of the subject goods from the subject countries.
- j) The domestic sale of the domestic industry has declined significantly in the POI (A) as compared to previous years despite significant increase in the demand. The domestic industry has suffered adversely on account of significant increase of the dumped imports.
- k) The number of employees engaged by the domestic industry has declined in the POI on account of the decline in production, sales and capacity utilization of the domestic industry due to low value dumped imports. This clearly shows the injurious impact of the dumped imports.
- l) The profitability of the domestic industry has been severely affected in the period of investigation due to intensified dumped imports of the subject goods from the subject countries. The low value dumped imports suppressed and depressed the domestic selling prices of the domestic industry. Accordingly, there is current injury as well as also a threat of material injury to the domestic industry.
- m) The return on capital employed (ROCE) of the domestic industry declined significantly in the POI as compared to the previous years. It clearly indicates that the domestic industry has

suffered material injury on account of dumped imports of the subject goods from the subject countries.

- n) The inventory of the subject goods has increased significantly due to the increase in the low value dumped imports of the subject goods from the subject countries.
- o) Both price undercutting and price underselling are positive and significant during the period of investigation. This clearly shows the injurious impact of the dumped imports on the domestic industry.
- p) The dumping margin from subject countries is significantly positive, and thus indicative of the aggressive pricing of the subject goods. The domestic industry has suffered injury on account of the same.
- q) The cash flow position of the domestic industry has significantly deteriorated in period of investigation as compared to the base year as well as the preceding years. The injury to the domestic industry on account of dumped imports is imminent.
- r) Decline in capacity utilization, production, domestic sales, domestic market share, profitability, ROCE, cash flow etc. clearly shows the injurious impact of the low value dumped imports of the subject goods from the subject countries. The only reason for the poor financial performance of the domestic industry is that it is not able to raise its prices due to the intensified dumped imports. It is a very unfortunate situation for the domestic industry that despite significant increase in demand, the financial performance continues to suffer.
- s) Future investment in the sector is also marred by the presence of dumped imports from subject countries. The decline in capacity utilization, production, domestic sales, domestic market share, profitability, ROCE, cash flow etc., clearly indicate that the ability of the domestic industry to raise capital investments for the sector is jeopardized by the dumped imports.
- t) As regards the submissions of the interested parties that the Annual Report of Indian Toners for the year 2018-19 indicate existence of other factors that may have impacted the performance of Domestic Industry, it is submitted that it is clearly mentioned in the Annual report that risk of imports of low-priced toners coming into the domestic market has always been there and acts as a major risk / threat capable of affecting the performance of the Industry. In any event, it may be noted that the POI is April 2019 to December 2019. Accordingly, the contents of the Annual Report for FY 2018-19 are not relevant and should not be considered by the Authority for the purpose of the present investigation.

Submission by other interested parties

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

- a) The performance of the DI as recorded in the PF does not show any material injury and the claim is only of some deterioration in factums or parameters of injury which should be

subjected to serious scrutiny and no material injury is apparent in such injury data as presented in the PF.

- b) The responding parties here are not in a position to file relevant and detailed comments on the injury aspect as even the basic volume information is not provided in the PF. In the absence of actual information on capacity, production, sales, demand, etc, no logical comments can be offered considering the fact that the DI was not offering complete range of products covered in the PUC and injury claimed cannot be linked to imports when substantial part of the imported were necessitated due to the inability of the petitioners to supply such types or a substitutable type.
- c) The imports increased in line with increase in demand but sales of the DI declined. The main causes of increase in imports have been that demand supply/quality issues, imports by related party of one of the petitioners and inclusion of unwarranted types in the scope of PUC.
- d) The declines in volume parameters of the DI when the demand in India increased cannot be linked to any dumping as alleged as the increase in imports were the result of lack of availability of various types of PUC in India.
- e) A related party of one of the petitioners also has been importing and selling the material and any injury on account of such imports should be noted as self-inflicted imports/injury and such injury should not be attributed to bonafide imports made by large number of users/importers.
- f) The petitioners have increased the capacity when the volume parameters were declining which shows that capacities were set up to cater to the export market and the trend of fall in capacity utilization in that context is highly misleading.
- g) The reasons such as foreign exchange fluctuations, increase in oil price and international freight owing to huge import of raw materials have been the cause of any concern for the petitioners and imports which was prevailing there always is not the cause of any injury.
- h) The landed price of imports did not impact profitability of the petitioners.
- i) The fall in core parameter like ROCE has no meaning since the profitability in domestic operation is compared with huge investments made for exports also.
- j) The parameters considered to examine the causal link aspect in the PF are not complete and proper.
- k) The Annual Report of India Toner for the year 2018-19 shows that more than 95% raw materials of the Company are imported which would make the company vulnerable to exchange rate fluctuation, increase in oil prices and international freight etc and other risks and any injury on account of such extraneous fact should not be linked to imports. The company admits that exports present a big opportunity for the company for increasing the capacity utilization and improving profitability which makes it amply clear that the capacity set up by the company are clearly targeting exports as well and any impact of fixed cost etc on account of capacity set up to export should not be attributed as injury on account of imports.

- l) ITDL has been spending huge sums of money on R&D throughout alleged injury period and later as it is reaping profits.
- m) There was no price suppression or depression due to subject imports.
- n) It is also submitted that there is neither any material injury nor imminent injury caused due to imports from subject countries as the DI has pumped additional capital and their working capital also increased. It is also submitted that all the injury parameters are showing that the Domestic Industry is performing well.

Examination by the Authority

83. Para (iii) of Annexure 11 of the Rules states the following:

"(iii) In cases where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when it determines that (a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as a percentage of export price and the volume of imports from each country is three per cent of the import of like article or where the export of individual countries less than three per cent, the imports collectively accounts for more than seven per cent of the import of the like article, and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles."

84. The Authority notes that:

- a) The margins of dumping from each of the subject countries are more than the *de minimis* limits prescribed under the Rules.
- b) The volume of imports from each of the subject countries is individually more than 3% of total volume of imports.
- c) Cumulative assessment of the effects of imports is thus appropriate as the exports from the subject countries not only directly compete inter se but also with the like articles offered by the domestic industry in the Indian market.

85. In view of the above, the Authority considers that it would be appropriate to assess injury to the domestic industry cumulatively from imports of the product under consideration from the subject countries.

86. The submissions made by the Domestic Industry with regard to the injury assessment and causal link have been examined in light of various parameters in accordance with the Rule 11 of Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, *"... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles"* In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the

effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the Domestic Industry evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.

Volume Effect of Dumped Imports on the Domestic Industry

(a) Assessment of Demand/Apparent Consumption

87. 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 has been taken into consideration. The demand so assessed has increased in the POI and preceding years as compared to the base year.

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|-----------------------------------|---------|---------|---------|---------|-------|------------------|
| Imports from Subject Country | MT | 2,203 | 2,569 | 2,617 | 2,226 | 2,969 |
| Imports from Other Countries | MT | 225 | 325 | 462 | 379 | 506 |
| Total Imports | MT | 2,428 | 2,894 | 3,080 | 2,606 | 3,474 |
| Sales of Domestic Industry | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 109 | 91 | 91 |
| Sales of Other Domestic Producers | MT | - | - | - | - | - |
| Trend | Indexed | - | - | - | - | - |
| Total Domestic Sales | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 109 | 91 | 91 |
| Demand | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 113 | 117 | 114 | 114 |

88. As can be seen from the above table, the dumped imports from subject countries have increased during the POI as compared to base year and preceding years. The domestic sales of the domestic industry declined on account of increase in the dumped imports.

(b) Import Volumes from the subject countries

89. With regard to the volume of the imports, it is noted that there has been a significant increase in imports from the subject countries, both in absolute terms and relative terms to production or consumption in India.

| Particulars | UoM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|---|---------|---------|---------|---------|-------|------------------|
| Imports from Subject Country | MT | 2,203 | 2,569 | 2,617 | 2,226 | 2,969 |
| Imports from Other Countries | MT | 225 | 325 | 462 | 379 | 506 |
| Total Imports | MT | 2,428 | 2,894 | 3,080 | 2,606 | 3,474 |
| Total PUC Production | MT | *** | *** | *** | *** | *** |
| Demand of Subject goods in India | MT | *** | *** | *** | *** | *** |
| Imports from Subject Country in relation to | | | | | | |
| Production | % | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 110 | 111 | 157 | 157 |
| Consumption | % | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 103 | 102 | 118 | 118 |

90. It is noted from the above table that imports of the subject goods from the subject country have increased in absolute terms in the POI as compared to the base year and preceding year.
91. It is also noted that the imports of PUC from the subject countries, in relation to production and demand, have also increased in the POI as compared to the base year and preceding years.

(c) Market Share in demand

92. It is noted that the market share of the domestic industry has declined in the POI as compared to previous years. The Applicants has lost market share in POI despite increase in demand of the product under consideration.

| Market share in demand | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Anl.) |
|------------------------|---------|---------|---------|---------|-----|------------|
| Domestic Industry | % | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 96 | 93 | 79 | 79 |
| Subject Countries | % | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 103 | 102 | 118 | 118 |

Price Effect of Dumped Imports on the Domestic Industry

93. With regard to the effect of the dumped imports on prices, it is required to be analysed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the Domestic Industry on account of the dumped imports from the subject countries has been examined with reference to price undercutting, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the Domestic Industry have been compared with landed price of imports of the subject goods from the subject countries.

(a) Price Undercutting

94. For the purpose of price undercutting analysis, the selling price of the Domestic Industry has been compared with the landed value of imports from the subject countries. Accordingly, the undercutting effects of the dumped imports from the subject countries works out as follows:

i. Price Undercutting (Subject Countries)

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|--|---------|----------|----------|----------|----------|------------------|
| Landed price from Subject Countries | Rs/MT | 3,58,173 | 3,41,697 | 3,49,364 | 3,19,506 | 3,19,506 |
| Trend | Indexed | 100 | 95 | 98 | 89 | 89 |
| Net selling price of Domestic Industry | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 94 | 93 | 91 | 91 |
| Price undercutting | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 86 | 58 | 106 | 106 |
| Price undercutting | % | *** | *** | *** | *** | *** |
| Price undercutting | Range | 0%-20% | 0%-20% | 0%-20% | 0%-20% | 0%-20% |

ii. Price Undercutting (China PR)

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|----------------------------|-------|----------|----------|----------|----------|------------------|
| Landed price from China PR | Rs/MT | 3,70,695 | 3,40,101 | 3,42,287 | 3,15,030 | 3,15,030 |

| | | | | | | |
|--|---------|--------|--------|--------|--------|--------|
| Trend | Indexed | 100 | 92 | 92 | 85 | 85 |
| Net selling price of Domestic Industry | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 94 | 93 | 91 | 91 |
| Price undercutting | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 120 | 97 | 154 | 154 |
| Price undercutting | % | *** | *** | *** | *** | *** |
| Price undercutting | Range | 0%-20% | 0%-20% | 0%-20% | 0%-20% | 0%-20% |

iii. Price Undercutting (Taiwan)

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|--|---------|----------|----------|----------|----------|------------------|
| Landed price from Taiwan | Rs/MT | 3,57,766 | 3,48,658 | 3,75,237 | 3,60,797 | 3,60,797 |
| Trend | Indexed | 100 | 97 | 105 | 101 | 101 |
| Net selling price of Domestic Industry | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 94 | 93 | 91 | 91 |
| Price undercutting | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 71 | 6 | 22 | 22 |
| Price undercutting | % | *** | *** | *** | *** | *** |
| Price undercutting | Range | 0%-20% | 0%-20% | 0%-20% | 0%-20% | 0%-20% |

iv. Price Undercutting (Malaysia)

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|--|---------|----------|----------|----------|----------|------------------|
| Landed price of Malaysia | Rs/MT | 3,24,968 | 3,23,794 | 3,80,344 | 2,50,400 | 2,50,400 |
| Trend | Indexed | 100 | 100 | 117 | 77 | 77 |
| Net selling price of Domestic Industry | Rs/MT | *** | *** | *** | *** | *** |

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|--------------------|---------|---------|---------|----------|---------|------------------|
| Trend | Indexed | 100 | 94 | 93 | 91 | 91 |
| Price undercutting | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 73 | -3 | 147 | 147 |
| Price undercutting | % | *** | *** | *** | *** | *** |
| Price undercutting | Range | 20%-40% | 0%-20% | (20)%-0% | 41%-60% | 41%-60% |

95. From the aforesaid table, it can be observed that the imports from the subject countries are coming at prices significantly below the domestic selling price of the Applicants. Thus, price undercutting during the period of investigation is positive for the subject countries.

(b) Price Suppression and Depression

96. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period, are compared as below:

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI Annualised |
|----------------------------------|---------|----------|----------|----------|----------|----------------|
| Landed value - Subject Countries | Rs/MT | 3,58,173 | 3,41,697 | 3,49,364 | 3,19,506 | 3,19,506 |
| Trend | Indexed | 100 | 95 | 98 | 89 | 89 |
| Domestic selling price Rs/MT | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 94 | 93 | 91 | 91 |
| Cost Rs./MT | Rs/MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 91 | 98 | 106 | 106 |

97. From the above table, it is noted that the imports from the subject countries were coming at prices lower than the cost of sales of the Domestic Industry in the POI. This has forced Domestic Industry to reduce its prices during POI, and therefore, resulted in significant decline in the profits. It is noted that the cost of sales (Rs/MT) has increased by 6% in POI as compared to base year, whereas the selling price of domestic industry has declined by 9% during the same period. Therefore, there is significant price depression and suppression on account of dumped imports.

Economic Parameters of the Domestic Industry

98. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on domestic producers of such products. With regard to consequent impact of dumped imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.
99. The injury parameters have been examined objectively taking into account various facts and submissions made.

(a) Production, Capacity, Sales and Capacity Utilization

100. Capacity, production, sales and capacity utilization of the Domestic Industry over the injury period is given in the following table: -

| Particulars | UoM | 2016-17 | 2017-18 | 2018-19 | POI | POI (Annualised) |
|----------------------|---------|---------|---------|---------|-----|------------------|
| Capacity | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 111 | 111 | 111 |
| Production | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 106 | 107 | 86 | 86 |
| Domestic Sales | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 109 | 91 | 91 |
| Capacity Utilization | % | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 99 | 97 | 78 | 78 |

101. The production, sales and capacity utilization of the Applicants have declined in POI (A) as compared to previous years. The same appears to be due to the significant volume of dumped imports coming from the subject countries.

(b) Profitability, return on investment and cash profits

102. Profitability, return on investment and cash profits of the Domestic Industry over the injury period is given in the table below: -

| Particulars | UoM | 2016-17 | 2017-18 | 2018-19 | POI | POI Annualised |
|----------------|---------|---------|---------|---------|-----|----------------|
| Domestic Sales | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 109 | 91 | 91 |
| Demand | MT | *** | *** | *** | *** | *** |

| Particulars | UOM | 2016-17 | 2017-18 | 2018-19 | POI | POI Annualised |
|-----------------------------------|----------|---------|---------|---------|-----|----------------|
| Trend | Indexed | 100 | 113 | 117 | 114 | 114 |
| Selling Price | Rs./MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 94 | 93 | 91 | 91 |
| Cost of Sales Price | Rs./MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 91 | 98 | 106 | 106 |
| Profit & Loss | Rs. Lacs | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 117 | 78 | 22 | 22 |
| Profit & Loss | Rs./MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 71 | 25 | 25 |
| Cash Profit | Rs./MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 77 | 43 | 43 |
| Return on Capital Employed (ROCE) | % | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 102 | 63 | 19 | 19 |

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

- a) In spite of continuous increase in demand of PUC, the Domestic Industry's profitability declined significantly due to following reasons:
 - The cost (R s / M T) has increased by 6% in the POI as compared to the base year. The cost has increased by 15% in the POI as compared to 2017-18.
 - The domestic selling price declined by 9% in the POI as compared to the base year due to dumped imports.
 - The sales volume has declined in POI (A) by 9% in comparison to the base year on account of aggressive dumping despite significant increase in demand.
- b) Similarly, the cash profits of the Domestic Industry have reduced substantially from 108 indexed points in 2017-18 to 43 indexed points during the POI (A).
- c) Return on capital employed during POI has also reduced significantly to 19 indexed points in POI (A) from 102 indexed points in 2017-18.

(c) Employment, productivity and wages

104. Employment, productivity and wages of Domestic Industry over the injury period is given in the table below:

| Particulars | UoM | 2016-17 | 2017-18 | 2018-19 | POI | POI Annualised |
|-------------|-----|---------|---------|---------|-----|----------------|
| | | | | | | |

| | | | | | | |
|-------------------------|----------|-----|-----|-----|-----|-----|
| Employees | Nos | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 101 | 95 | 86 | 86 |
| Wages | Rs. Lacs | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 108 | 115 | 118 | 118 |
| Productivity / Employee | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 106 | 113 | 100 | 100 |
| Wages/employee | Rs/ Nos | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 107 | 121 | 137 | 137 |

105. It is noted that the employment of the Domestic Industry and productivity have declined in the POI whereas wages & wage/employee have registered increase.

(d) Inventories

106. Inventory position with the Domestic Industry over the injury period is given in the table below:

| Particulars | UoM | 2016-17 | 2017-18 | 2018-19 | POI | POI Annualised |
|-------------------|---------|---------|---------|---------|-----|----------------|
| Average Inventory | MT | *** | *** | *** | *** | *** |
| Trend | Indexed | 100 | 162 | 233 | 409 | 409 |

107. It is noted that the inventories with the Domestic Industry have increased to 409 indexed points during POI (A) as compared to 100 indexed points in 2016-17. Due to increased dumped imports, the market share of the Domestic Industry has come down in POI. The increased demand has been captured by dumped imports.

(e) Growth

108. It is noted that growth of the Domestic Industry with regard to market share in demand, production, sales and capacity utilization have declined significantly in the POI as compared to 2017-18 and 2018-19.

(f) Factors affecting domestic prices

109. The examination of the import prices from the subject countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the Domestic Industry in the domestic market, etc. shows that the landed value of imported material from the subject countries is below the selling price and the cost of production of the Domestic Industry, causing significant price undercutting as

well as price suppression in the Indian market. It is also noted that the demand for the subject goods significantly increased during the POI as compared to the previous years. Thus, it can be concluded that the principal factor affecting the domestic prices is the dumped imports of subject goods from the subject countries.

Magnitude of Injury and Injury Margin

110. The Authority has determined Non-Injurious Price for the Domestic Industry on the basis of principles laid down in Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined based on information/data relating to the cost of production for the period of investigation. The NIP of the Domestic Industry has been worked out and it has been compared with the landed price from the subject countries for calculating injury margin.

| Country of origin and/or Export | Name of Producer | NIP (USD/MT) | Landed Value (USD/MT) | IM (USD/MT) | IM (%) | IM % range |
|---------------------------------|-----------------------------------|--------------|-----------------------|-------------|--------|------------|
| China PR | Handan Hanguang OA Toner Co., Ltd | *** | *** | *** | *** | 30-40 |
| China PR | Any other producer | *** | *** | *** | *** | 40-50 |
| Malaysia | Any producer | *** | *** | *** | *** | 40-50 |
| Taiwan | Any producer | *** | *** | *** | *** | 0-10 |

111. The injury margins from all the subject countries are positive and significantly high from China PR & Malaysia.

Examination by the Authority of miscellaneous submissions regarding injury

112. As regards the allegation of the interested parties that other factors are the cause of injury, the Authority notes that the Annual Report submitted by the interested parties to support their claim is for financial year 2018-19 while the POI is April 2019 to December 2019. Accordingly, the same is misplaced. Further, it is also noted that there is no legal requirement that imports should be the only cause/reason of injury to seek protection under the anti-dumping law.
113. On the issue of demand-supply gap, it is noted that anti-dumping duties are imposed to not prohibit imports but it is merely a tool to ensure that the imports are coming into India at fair prices and imports can still come after the imposition of duties given that they are fairly priced. This is in line with the consistent practice of the Authority.
114. With regard to the request made by the Domestic Industry to verify the value and quantity of exports made by the exporters with the official transaction-wise import data sourced from

DGCI&S / DG Systems in order to ensure that the Domestic Industry is not deprived of the rightful protection on account of the incorrect reporting of the exporters, the Authority has verified the exports reported by the exporters in their response. The Authority noted that there are significant differences in the transactions reported by certain exporters and the same have been appropriately addressed at the relevant place in this document.

H. NON-ATTRIBUTION ANALYSIS

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

Volume and price of imports from third countries

116. The share of the imports from countries other than the subject countries is only 15% in the total imports during the POI. The import price from other countries is significantly higher as compared to the prices from the subject countries. Hence, imports from third countries are neither causing nor threatening to cause injury to the Domestic Industry.

Export Performance

117. The data for domestic operations only has been considered for the injury analysis.

Development of Technology

118. None of the interested parties have participated and furnished any evidence to demonstrate significant changes in the technology that could have caused injury to the Domestic Industry.

Performance of other products of the company

119. The domestic industry is majorly engaged in the production and sales of PUC. Only M/S Indian Toners and Developers Ltd has sold meagre quantity of other product. Accordingly, performance of other products is neither causing nor threatening to cause injury to the Domestic Industry.

Trade Restrictive Practices and Competition between the Foreign and Domestic Producers

120. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party, to suggest that injury has been caused on account of competition between the foreign and the domestic producers.

Contraction in Demand and Changes in pattern of consumption

121. It is noted that the demand of the subject goods has increased consistently over the entire injury period except a marginal decline in the POI (A) as compared to 2018-19. Thus, it can be concluded that the injury to the Domestic Industry is not due to contraction in demand.

I. Conclusion on Injury and Causal Link

122. The Authority notes the following:

- a) There is significant dumping of the subject goods in the Indian market, leading to availability of dumped imports in the market.
- b) The imports have increased in absolute terms as well as in relation to production and consumption.
- c) The increased imports have taken away the market share of the domestic industry.
- d) The domestic industry has suffered a decline in its production, sales and capacity utilization, while its inventories have increased significantly.
- e) The imports have depressed/suppressed the prices of the domestic industry.
- f) The profits, cash profits and return on capital employed have declined significantly.
- g) The growth of the domestic industry in terms of both volume and profitability parameters is negative.
- h) The price underselling is positive and significant.

123. In view of the above, it is therefore, concluded that the domestic industry suffered material injury due to dumped imports.

J. POST DISCLOSURE COMMENTS

Submissions made by the domestic industry

124. TCOA has misrepresented the quantities of certain transactions in appendix 3A. Therefore, the domestic industry humbly requests the Hon'ble Authority to treat TCOA as non-cooperative and impose highest duty, which should necessarily be in the nature of a punitive measure. Further, the Authority may take any appropriate action deemed fit under the circumstances to discourage such practices by the co-called cooperating exporter.

125. The Authority has rightly proposed to treat TTI as non-cooperative. The domestic industry humbly requests the Authority to treat TTI as non-cooperative on the following grounds.

- i TTI has misrepresented / under-reported the quantities of subject goods purchased from related Chinese producer.
- ii The Authority has prescribed the exporters' questionnaire response format vide Trade Notice No. 05/2018 dated 28 February, 2018. It is categorically mentioned in section C of the trade notice that details of the purchased subject goods are required to be reported in Appendix 2. However, TTI has deliberately under-reported the details of the purchased subject goods in Appendix 2.

- iii Further, TTI has claimed in response to question no 6 of section A of its questionnaire response that none of its related parties are engaged in the production or sales of the subject goods during the POI. This is a clear misrepresentation of facts with a clear view to mislead the Authority and get a favorable result.
- iv In view of the misrepresentation of facts by TTI, the domestic humbly requests the Hon'ble Authority to treat TCOA as non-cooperative and impose highest duty, which should necessarily be in the nature of a punitive measure. Further, the Authority may take any appropriate action deemed fit under the circumstances to discourage such practices by the co-called cooperating exporter.
- v TTI has not completely reported the quantities of the subject goods purchased from its affiliated company based in China PR (subject country) for exports to India. Accordingly, it is clear that TTI is also a trader of the subject goods. Appendix 5 is required to be filed by a trader in terms of the Trade Notice No 05/2018. However, TTI has not filed the same as evidenced from the non-confidential version of its questionnaire response (page no 3 - Index). TTI has not filed its questionnaire response in the format prescribed by the Authority *vide* Trade Notice No. 05/2018 dated 28 February, 2018.

126. In view of the above facts, the domestic humbly requests the Authority to kindly treat TTI as non-cooperative and impose highest duty on it on this ground alone. Since the manipulation and misrepresentation has been done by TTI precisely to get a favourable outcome, the domestic industry humbly requests the Hon'ble Authority not only to treat TTI as non-cooperative but also to take any appropriate action deemed fit under the circumstances to discourage such practices by the so-called cooperating exporter.

127. TTI has not completely reported the quantities of the subject goods purchased from its affiliated company based in China PR (subject country) for exports to India. TTI has a related company, which is engaged in the production and sales of the subject goods from the subject countries. However, its related company has not filed the questionnaire response making their entire response liable to be rejected outright.

128. The fundamental economic rationale, which compels investigating authorities across the world to insist upon full participation by all related parties is that such producers/exporters are considered as a "single supplier" from the anti-dumping perspective. It is also referred to as the "single economic entity" concept which is well recognized in literature and jurisprudence on the subject. The underlying idea is that while the transactions between related parties can be identified, it is practically impossible to understand or unravel the complex internal decision-making process on various economic and commercial strategies. It is, therefore, no longer an issue anywhere in the world that related parties have to cooperate fully to get an individual treatment available only to cooperating exporters.

129. The above approach is reflected in the practices and also in the prescribed questionnaire formats of various authorities. In order to substantiate our claim in this context, kind attention of the Authority is invited to the following points from the Indian prescribed questionnaire format (Trade Notice No 5/2018 dated 28 February, 2018):

- a. The questionnaire format is prescribed under the Rules and, therefore, it is mandatory for the exporters to file the same.
 - b. There is no room for individual respondents to exercise its discretion. If the discretion is left to the exporters, it will lead to a situation where the power of the Authority will be usurped by the respondent. This will be a chaotic situation.
 - c. Para 2 of the general instructions of the prescribed questionnaire also clearly asks the responding parties to file the questionnaire response of the related companies.
 - d. The requirement to file the responses by all the related parties is further emphasized in paragraphs 8 & 9 of the very same prescribed questionnaire format.
 - e. Further, para 4 of Section D of the prescribed exporter questionnaire clearly asks to provide the audited accounts of the related companies.
130. The above provisions of the prescribed questionnaire make it abundantly clear that in order to be considered as a cooperating exporter, the response of the related parties have to necessarily be filed in the prescribed questionnaire format. The information of the related companies is important so that the Authority can check the accuracy, adequacy and completeness of the information. It follows that the failure to file the questionnaire response by any of the related parties shall lead to the rejection of the entire response.
131. The Indian questionnaire format as well as the EC format make it mandatory for all the related parties to respond in order to get an individual dumping margin treatment. It is important to note that no discretion or leeway has been provided to the responding parties in this regard. A perusal of the instructions in the form of a prescribed format under the Rules as well as the EC questionnaire, also make it clear that the reference is to the countries under investigation as a whole i.e., the subject countries. This is not to say that the related producers situated in separate countries shall not be entitled to separate dumping margins but it is also abundantly clear that the same would be contingent upon their fully cooperating in the investigation by the Authority. Failure to do so shall invariably lead to rejection of the entire response.
132. The exporter should not be allowed to submit any fresh evidence or information at this stage of the investigation. Authority is also requested to reject the response filed by TTI and treat it as non-cooperative as its related producer / exporter based in China PR has not filed the questionnaire response in gross violation of the trade notice.

Submissions by other interested parties

133. The discussions on PUC and Like Article in the Disclosure fail to address the concerns raised by the importer here and we request the Authority consider them favourably.
134. The observation of the Authority on standing of the petitioners is provided in the Disclosure. However, we are not in a position to offer any meaningful comments on the same as the

share of imports by a related party of one of the petitioners in subject imports etc. is all held confidential.

135. The increase in imports is on account of the inability of the petitioners to supply all types of black toners and also imports were made by a related trader of one of the petitioners. The increase in imports is, thus, neither indicative of any adverse effects on the petitioners nor it can be said that there is any threat from such imports. Such increases in imports were the result of factors other than any alleged dumped price offered by the exporters.
136. The facts disclosed on alleged injury do not show any material injury having been suffered by the domestic industry. The decline in market share of the petitioners should be seen in light of their inability to supply a wide range of black toners as has been enlisted by us.
137. We request the Authority to reach a conclusion that the case warrants no Anti-dumping as the claims of dumping and consequent injury does not stand substantiated.
138. The Authority needs to mention names of both the producers in the duty table as these are two different entities and both of them are producers.
139. DGTR has relied on DG System data and rejected the response of TTI, the Authority should have shared the DG System data with us. The rejection of complete response of TTI on a flimsy and hypothetical ground is a clear violation of Article 6.7 and Para 6 of Annex II of the Anti-dumping agreement.
140. The Authority has wrongly concluded the normal value for TTI. Further, it has been submitted that the transaction based on which TTI response has been rejected has no relevance in working out the normal value of TTI. The subject transactions relate to goods produced by TTI and exported to India by TTI, which may be verified from the commercial invoice, packing list etc. issued by the General Chamber of Commerce, Taiwan.
141. Domestic industry does not produce subject material which is used for high-speed machines and high in cost.
142. Anti-dumping should be fixed as a bench mark / reference price as this will permit imports of high-grade black toner, which is not manufactured by the petitioner.
143. As regards the technical errors in Appendix 3A, TCOA has submitted a corrigendum of the table on 18th January, 2021. There is no change in the transaction but only in total quantity. The technical error in the Appendix 3A does not affect the accuracy of the data reported in the table. The error was not an intentional error.
144. DGTR does not apply equal criteria when it decides to use "facts available information". TCOA notes that in the disclosure of "Export Price for Handan Hanguang OA Toner Co., Ltd. along with its related producer HG Technologies Co., Ltd." DGTR discloses that the unrelated producer had not field the EQR. Thus, the data provided by the respondent are incomplete. However, DGTR still accepted rest of data provided by the respondent.

145. It is incorrect to state that all the importers have not cooperated in the present investigation and their data is not as per the prescribed format, as complete data had been duly submitted by them in the prescribed format within the stipulated time. Further, the same data is resubmitted as and when department required by the DGTR.
146. It is submitted that the Domestic Industry has clubbed all kinds of black toner in one category for purposes of present investigation. Moreover, imported black toner is different in specifications from the black toner produced by domestic Industry. Further, the black toner produced by domestic industry is not produced using advance technology and is inferior in quality to black toner imported from subject countries and also the fact that there is huge price difference in articles which DI produce and in the articles imported from subject countries.
147. That the Domestic Industry has combined all variants of Black Toner under one category. It is further submitted that the Domestic Industry is also not producing many variants of the Black Tonner. Therefore, the Authority should have made PCN to PCN wise analysis for proper and fair comparison. That the dumping margin computed by the Authority is incorrect as export price and normal value are incorrect.
148. It is further submitted that the Authority has considered Pure Toners and Developers Private Limited as Domestic Industry despite the fact that they have imported the subject goods from subject countries.
149. It is submitted that the Authority has not considered the detailed submissions made by the importers in the disclosure statement.
150. That the Domestic Industry is not suffering any injury and in particular from subject countries.

Examination by the Authority

151. The Authority notes that many of the issues raised in the post-disclosure comments are mere reiteration in nature and already been dealt appropriately. Additional submissions have been analyzed as under:
 - a) With regard to the PUC and like article, it is incumbent upon the party which seeks any exclusion of a product type or grade from the purview of product under consideration, to provide sufficient information to establish that the products for which exclusion is sought are technically and commercial not substitutable with the products manufactured by the domestic industry. None of the interested parties have specified any grounds on which such exclusion are sought and have also not provided any basis or evidences for such claims. Therefore, the Authority does not find any merit in their claims for exclusion.
 - b) As regards fixing of anti-dumping duty on bench mark / reference price basis, the Authority notes that in view of the factual matrix of the case, it has been considered appropriate to recommend fixed duty instead of benchmark duty.

- c) With regards to the claim made by the TCAO, the Authority has carefully examined the data submitted by the exporter. It is noted that it is certain specific entries in the field characteristic has been changed in a manner which resulted in higher export price by TCOA. Such type of practices places entire data of TCOA under suspicion. In view of the above, the contention of the exporter that there was a mere technical error, is not acceptable.
- d) As regards claim made by the interested parties regarding application of equal criteria, it is noted that both Handan Hanguang OA Toner Co., Ltd. along with its related Producer namely HG Technologies Co., Ltd., China PR have filed the questionnaire response. The Authority notes that the reference to Handan is not relevant as the party who has not supplied the response is unrelated to the producer.
- e) With regard to the request made by Handan Hanguang OA Toner Co., Ltd to also include name of this related Producer namely HG Technologies Co., Ltd., it is noted that the name of HG Technologies Co., Ltd in the duty table as a producer.
- f) As regards the claim made by TTI that the transactions considered of Chinese origin are in fact manufactured by TTI and are of Taiwanese origin, it is noted that the TTI data with the DG System data has again been cross-checked and it is found that the DG System data clearly mentions that these *** MT are of Chinese origin and not of Taiwanese origin. There is significant variation between the export quantities reported in Appendix 2 and DG System data.
- g) With regards the contention of TTI to share DG System data, it is noted that the quantum of mismatch (DG system record) w.r.t. data filed by the TTI is already intimated to TTI after the request made through email on behalf of the TTI.
- h) With regard to the request for PCN-wise analysis, it is noted that the concerned interested party had not raised this issue even in its comments to the preliminary findings. Further, none of the interested party had made such a request till that stage. The Authority notes that such a request at this extremely belated stage is not possible to accede to.
- i) With regard to the claim of some interested party regarding inferior quality of the subject goods manufactured by the domestic industry, it is noted that no product exclusion can be permitted on the ground of quality of the subject goods.
- j) With regard to the submission that Pure Toners and Developers Private Limited ought to have not been considered as Domestic Industry on account of the fact that they have imported the subject goods from subject countries, it is noted that the AD Rules give discretion to the Designated Authority to permit a producer which imports or is related to the importer of PUC as domestic industry depending on the quantum of import. It is noted that the importer linked with M/S Pure Toners and Developers Pvt. Ltd had imported miniscule quantities of subject goods from a subject country (***% of imports from subject countries and ***% of domestic industry's production). Therefore, after taking into account the miniscule quantity of

imports, the Authority has decided to consider M/S Pure Toners and Developers Pvt. Ltd as an eligible producer to be considered as Domestic Industry in terms of Rule 2(b).

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

152. 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 would 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.
153. 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.

L. CONCLUSION

154. After examining the submissions made by the interested parties and issues raised therein, and considering the facts available on record, the Authority concludes that:
- a) The product under consideration has been exported to India from the subject countries below its normal value.
 - b) The domestic industry has suffered material injury.
 - c) Material injury has been caused by the dumped imports of the product under consideration from the subject countries.

M. RECOMMENDATIONS

155. 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.

156. In terms of provision contained in Rule 4(d) & Rule 17(1)(b) of the Rules, the Authority recommends imposition of anti-dumping duty equal to lesser of margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duty equal to amount mentioned in column 7 of the duty table below is recommended to be imposed for five (5) years from the date of notification issued by the Central Government imposing provisional duty on all imports of goods described at Column 3 of the duty table, originating in or exported from China PR, Malaysia and Taiwan.

Duty Table

| S. No | IIS Code | Description of Goods* | Country of Origin | Country of Export | Producer | Amount | Unit | Currency |
|-------|----------|-----------------------------|--|--------------------------------|---|--------|------|----------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1 | 3707 | Black Toner in Powder Form* | China PR | Any country including China PR | a) Handan Hanguang OA Toner Co., Ltd. b) HG Technologies Co., Ltd. | 1167 | MT | USD |
| 2 | 3707 | Black Toner in Powder Form* | China PR | Any country including China PR | Any producer other than at serial number 1 | 1458 | MT | USD |
| 3 | 3707 | Black Toner in Powder Form* | Any country other than China PR, Malaysia & Taiwan | China PR | Any | 1458 | MT | USD |
| 4 | 3707 | Black Toner in Powder Form* | Malaysia | Any country including Malaysia | Any | 1568 | MT | USD |
| 5 | 3707 | Black Toner in Powder Form* | Any country other than Malaysia, China PR & Taiwan | Malaysia | Any | 1568 | MT | USD |
| 6 | 3707 | Black Toner in Powder Form* | Taiwan | Any country including Taiwan | Any | 159 | MT | USD |
| 7 | 3707 | Black Toner in Powder Form* | Any country other than Taiwan, China PR & Malaysia | Taiwan | Any | 159 | MT | USD |

Black Toner in Powder Form excluding the following:

- i. *Color Toner*
- ii. *MICR Toner (Specialized Toner used for printing in Cheques)*
- iii. *Toners imported for the use by Original Equipment Manufacturers of Printing Equipment.*
- iv. *Toner in Cartridges*
- v. *Toner in liquid form*

157. Subject to above, the Preliminary Finding notified vide notification dated 18th June, 2020 is hereby confirmed.

N. FURTHER PROCEDURE

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.



(B.B Swain)

Designated Authority