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F. No. 7/1/2020-DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Trade Remedies  
4th Floor, Jeevan Tara Building,  
5, Parliament Street, New Delhi -110001

Dated: 29<sup>th</sup> October 2020

**FINAL FINDINGS**

**Case No (SSR) 01/2020**

**Subject: Sunset Review of Anti-Dumping Investigation concerning imports of ‘Caustic Soda’ originating in or exported from China PR and Korea RP.**

**A. BACKGROUND OF THE CASE**

**F. No. 7/1/2020-DGTR:** 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. The Designated Authority (hereinafter referred to as “Authority”) received an application dated 4<sup>th</sup> January, 2020, through TPM Consultants, from Alkali Manufacturers Association of India (AMAI) (hereinafter also referred to as ‘Applicant’) requesting initiation of sunset review investigation (SSR) of anti-dumping duty on imports of ‘Caustic Soda’, (hereinafter also referred to as ‘subject goods’ or ‘product under consideration’) originating in or exported from China PR and Korea RP (hereinafter referred to as ‘subject countries’).
2. The original investigation was initiated on 14<sup>th</sup> May, 2002 to examine the nature and the extent of dumping and its injurious effect on the domestic industry with respect to Caustic Soda originating in or exported from China PR and Korea RP. The Authority vide its Preliminary Findings No. 14/10/2002-DGAD dated 21<sup>st</sup> September, 2002 recommended the imposition of provisional duty against the dumped imports of the subject goods from the subject countries, which was imposed vide Customs Notification No. 142/2002 – Customs dated 26<sup>th</sup> December, 2002. Thereafter, the Authority, vide its Final Findings No. 14/10/2002-DGAD dated 4<sup>th</sup> August, 2003, recommended imposition of anti-dumping duties, which were given effect vide Customs Notification No. 142/2003-Customs dated 23<sup>rd</sup> September, 2003 for a period of five years.

3. The Authority initiated a sunset review on 22<sup>nd</sup> November, 2007. The Authority, vide Final Findings Notification No.15/11/2007-DGAD dated 21<sup>st</sup> November, 2008, recommended continued imposition of definitive anti-dumping duties against the imports of subject goods from the subject countries. The findings of the Authority were given effect vide Customs Notification No. 137/2008-Customs dated 26<sup>th</sup> December, 2008 and the duties were continued for a further period of five years.
4. On the request of the Applicant, the Authority initiated a mid-term review investigation against imports from Korea RP vide Notification No. 15/2/2010-DGAD dated 8<sup>th</sup> June, 2010. The Authority recommended modification of anti-dumping duties vide Notification No. 15/2/2010-DGAD dated 7<sup>th</sup> July, 2011 which were given effect vide Customs Notification No. 95/2011-Customs dated 3<sup>rd</sup> October, 2011.
5. The Authority initiated a second sunset review on 19<sup>th</sup> December, 2013. The Authority, vide Notification No. 15/23/2013-DGAD dated 18<sup>th</sup> June, 2015, recommended continued imposition of definitive anti-dumping duties against the imports of subject goods from the subject countries. The findings of the Authority were given effect vide Customs Notification No. 42/2015-Customs (ADD) dated 18<sup>th</sup> August, 2015.
6. In terms of Section 9A (5) of the Act, anti-dumping duties imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review, whether the expiry of anti-dumping duties is likely to lead to continuation or recurrence of dumping and injury. Further, Rule 23 (1B) of the Rules provides as follows

*“any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.”*

7. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry, as to whether the expiry of anti-dumping duties is likely to lead to continuation or recurrence of dumping and injury.
8. The Applicant filed an application dated 4<sup>th</sup> January, 2020, requesting initiation of sunset review of anti-dumping duties imposed earlier and seeking continuation of anti-dumping duties against imports of Caustic Soda from China PR and Korea RP. The request was based on the grounds that the expiry of the measure was likely to result in continuation of dumping of the subject goods and consequent injury to the domestic industry.
9. In view of the duly substantiated application with *prima facie* evidence of likelihood of dumping and injury filed on behalf of the domestic industry and in accordance with Section 9A(5) of the Act, read with Rule 23 of the Rules, the Authority initiated the SSR Investigation vide Notification No. 7/1/2020-DGTR dated 7<sup>th</sup> February, 2020 to review the need for continued imposition of anti-dumping duties in respect of the subject goods,

originating in or exported from the subject country and to examine whether the expiry of the said anti-dumping duties is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

10. Pending conclusion of the investigation, the anti-dumping duties were extended vide Notification No. 25/2020-Customs (ADD) dated 17<sup>th</sup> August, 2020.

**B. PROCEDURE**

11. The scope of the present review covers all aspects of the Final Findings No. 14/10/2002-DGAD dated 4<sup>th</sup> August, 2003, Final Findings No. 15/11/2007-DGAD dated 21<sup>st</sup> June, 2008 and Final Findings Notification 15/23/2013-DGAD dated 18<sup>th</sup> June, 2015, by which imposition and continuation of anti-dumping duties on imports of subject goods originating in or exported from the subject country had been recommended, respectively.
12. The procedure described herein below has been followed:
  - i. The Authority vide Notification No. 7/1/2020-DGTR dated 7<sup>th</sup> February, 2020 published a public notice in the Gazette of India, Extraordinary, initiating sunset review investigation against imports of the subject goods from the subject countries.
  - ii. A copy of the public notice was forwarded by the Authority to the Embassies of the subject countries in India, known producers and exporters from the subject countries, known importers and other interested parties, to inform them of the initiation of the subject investigation in accordance with Rule 6(2) of the Rules.
  - iii. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, and to the Government of the subject countries, through their Embassy, and to other interested parties who made a request therefor in writing in accordance with Rule 6(3) of the Rules supra. A copy of the non-confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.
  - iv. The Authority forwarded a copy of the public notice initiating SSR investigation to the known producers / exporters in the subject countries, and other interested parties and provided them an opportunity to file response to the questionnaire in the form and manner prescribed within time limit as prescribed in the initiation notification or extended time limit, and make their views known in writing in accordance with the Rule 6(4) of the Rules.
  - v. The Authority forwarded copies of the Notification to the following known producers/ exporters:
    - a. Bum Chang Ind. Co. Limited
    - b. DC Chemicals Limited
    - c. Dongying City Longxing Chemical Co.
    - d. Hanwha Solutions Corporation
    - e. Hong In Chemical Co. Limited
    - f. Huanghua Tianxin Chemical Industries Limited
    - g. Jinhua Chemical Group Co. Limited
    - h. LG Chem Limited
    - i. Lotte Fine Chemical Co. Limited
    - j. Mudanjian Xiangda Chemicals Corp.
    - k. N.K. Agro Chemical Co. Limited
    - l. OCI Company Limited

- m. Qindao Hisea Chem Co. Limited
- n. Samsung Fine Chemicals Co.
- o. Shanghai Chlor Alkali Chemicals
- p. SS Pharm. Co, Limited
- q. Tianjin Bohai Chemical Industries Import and Export Corp.
- r. Tianjin Dagu International Corp
- s. Tianjin Tianshui Chemical Industries Import and Export Corporation
- t. Xilan Chemicals Co. Limited
- u. Young Jin Chemical Co. Limited
- vi. The Government of the subject countries, through their Embassies in India were also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the known producers/exporters was also sent to the Embassies of the subject countries along with the names and addresses of the known producers/ exporters from the respective subject countries.
- vii. The following producers/exporters from China PR and Korea RP filed a response to the exporter questionnaire:
  - a. Bohai Chemical (HK) Limited
  - b. Hanwha Solutions Corporation
  - c. Mitsubishi Corporation
  - d. Tianjin Bohai Chemical Industries Import and Export Corp.
  - e. Tianjin Dagu Chemical Co., Ltd.,
  - f. Tricon Energy Ltd.
- viii. The Authority forwarded a copy of the Notification to the following known importers/ users of subject goods in India calling for necessary information, in accordance with Rule 6(4) of the Rules:
  - a. Abhay Chemicals Limited
  - b. Adani Exports Limited
  - c. Adani Wilmar Limited
  - d. Albright Wilson Chemicals Limited
  - e. Arvind Mills Limited
  - f. Bilag Industries Pvt Limited
  - g. Birla Cellulose Limited
  - h. C J Shah & Co
  - i. Central Pulp Mills Limited
  - j. Cyanides & Chemicals Company Prop. Hindustan Development Cor. Limited
  - k. Daurala Organics Limited
  - l. Deepak Nitrite Limited
  - m. Godrej Soaps Limited
  - n. Gujarat Narmada Fertilizer & Chemicals Limited
  - o. Gujarat State Fertilizer & Chemicals Limited
  - p. Hindustan Lever Limited
  - q. Hindustan Link & Resins Limited
  - r. Hitsu Industries Limited
  - s. Indian Farmer Fertilizer Coop. Limited
  - t. Indian Oil Corporation Limited
  - u. Jaysynth Dyechem Limited
  - v. Libra Foams
  - w. Link Pharma Limited

- x. Meghmani Organics Limited
- y. Narmada Chemature Petrochemicals Limited
- z. National Aluminium Company Limited
- aa. Nirma Limited
- bb. Pab Chemicals (P) Limited
- cc. Products Limited
- dd. Rama News Prints & Papers Limited
- ee. Rubamin Limited
- ff. Sabero Organics Limited
- gg. Shri Ramchandra Straw
- hh. Torrent Gujarat Biotech Limited
- ii. Transpek Silox Industries Limited
- jj. Vedanta Limited (Aluminium Division)
- ix. The following importer/user has filed a questionnaire response/submission in the present investigation:
  - a. Vedanta Limited
  - b. Aluminium Association of India
- x. The request for continuation of anti-dumping duty has been supported by Chemfab Alkalies Limited, Chemplast Sanmar Limited, DCM Shriram Limited, Durgapur Chemicals Limited, Gujarat Fluorochemicals Limited, Lords Chloro Alkali Limited, Meghmani Finechem Limited, Nirma Limited, Orient Paper Mills, Punjab Alkalies & Chemicals Limited, Reliance Industries Limited, Tamilnadu Petroproducts Limited, TATA Chemicals Limited, TGV SRAAC Limited, The Andhra Sugars Limited and The Travancore – Cochin Chemicals Limited.
- xi. The period of investigation (POI) for the purpose of the present investigation is April 2019-December 2019 (9 months). The injury analysis period covers April 2016- March 2017, April 2017- March 2018, April 2018- March 2019 and the POI.
- xii. Transaction-wise imports data for the POI and the preceding three years was procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems (DGS). The Authority has, relied upon data of DGCI&S and DGS for calculating the volume and value of imports of the subject goods in India.
- xiii. Further information was sought from the Applicant to the extent deemed necessary. Verification of the data provided by domestic industry was conducted to the extent considered necessary for the purpose of present investigation.
- xiv. The Authority made available the non-confidential version of the submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xv. The domestic industry has submitted financial data duly certified by their Chartered/Cost Accountant. The non-injurious price (NIP) based on the optimum 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 has been worked out so as to ascertain whether anti-dumping duties lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xvi. In accordance with Rule 6(6) of the Rules, the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 8<sup>th</sup> October,

2020 through video conferencing. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.

xvii. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this Disclosure Statement.

xviii. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of this Disclosure Statement to the extent possible and verified the data/ documents submitted by the domestic industry to the extent considered relevant, practicable and necessary.

xix. The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered 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.

xx. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded this Disclosure Statement on the basis of the facts available.

xxi. In accordance with Rule 16 of Rules Supra, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 26th and 27<sup>th</sup> October 2020 and comments received thereon, considered relevant by the Authority, have been addressed in this 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.

xxii. \*\*\* in this Final Findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.

xxiii. The exchange rate adopted by the Authority for the subject investigation is US\$1= 71.24.

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

13. At the stage of initiation, the product under consideration was defined as follows

*"The product under consideration in the present investigation is Sodium Hydroxide (chemical nomenclature of NaOH), commonly known as Caustic Soda originating in or exported from Korea ROK and China PR. Caustic Soda is an inorganic, soapy, strongly alkaline and odourless chemical.*

*Caustic Soda is classified under Chapter 28 of the Customs Tariff Act, 1975 under Customs head 2815.11 and 2815.12. As per ITC 8-digit classification, the product is classified under the Custom Heading 2815.1101, 28151102 and 2815.1200. ”*

**C.1. Submissions of the domestic industry**

14. The following submissions have been made by the domestic industry with regard to the scope of product under consideration or like article.
  - i. Since the present investigation is a sunset review investigation for continued imposition of anti-dumping duty, the product under consideration is the same as in the original investigation and earlier conducted sunset review investigation.
  - ii. The goods produced by the domestic industry and that imported into India are like article.

**C.2. Submissions of other interested parties**

15. No submissions have been made by the other interested parties regarding the scope of product under consideration or like article.

**C.3. Examination by the Authority**

16. The product under consideration in the present investigation is Caustic Soda of all types. Caustic Soda is chemically known as NaOH or Sodium Hydroxide. It is an inorganic, soapy, strongly alkaline and odourless chemical.
17. The present investigation being an SSR investigation, the scope of the product under consideration remains the same as that in the original and subsequent review investigation. In the earlier investigation, the product under consideration was defined as follows:

*“The product under consideration in the present investigation is Sodium Hydroxide (chemical nomenclature NaOH), commonly known as Caustic Soda originating in or exported from Korea RP and PR China. Caustic Soda is an inorganic, soapy, strongly alkaline and odourless chemical and finds application in various fields like manufacture of pulp and paper, newsprint, viscose yarn, staple fibre, aluminium, cotton, textiles, toilet and laundry soaps, detergent, dyestuffs, drugs and pharmaceuticals, petroleum refining etc. ”*

18. The product under consideration is classified under Chapter Heading 28, under the tariff codes 28151110, 28151190 and 28151200. The customs classification is indicative only and is not binding on the scope of product under consideration.
19. Caustic Soda is produced in two forms, that is, lye and solids. Liquid form can be converted into solid and the solid form can be reconverted into liquid with ease and without any change in the chemical properties of the product. The solid form has ease of storage and transportation whereas the liquid form has easy solubility. For end use both the forms are substitutable and interchangeable.

20. Caustic Soda is industrially produced as a 50% solution by variations of the electrolytic chlor-alkali process. This involves the electrolysis of an aqueous solution of sodium chloride. The sodium hydroxide builds up at the cathode, where water is reduced to hydrogen gas and hydroxide ion. To produce the subject goods, it is necessary to prevent reaction of the NaOH with the chlorine. This is typically done in one of three ways, using the mercury cell process, diaphragm cell process or the membrane cell process.
21. On the basis of information on record, the Authority holds that there is no known difference in the subject goods produced by the domestic industry and those imported from the subject country. The two are comparable in terms of physical characteristics, manufacturing process, functions and uses, product specifications, distribution and marketing, and tariff classifications of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The Authority holds that the product manufactured by the Applicants constitutes like article to the subject goods being imported into India from the subject country in terms of Rule 2(d) of the Rules.

#### **D. DOMESTIC INDUSTRY AND STANDING**

##### **D.1. Submissions of the domestic industry**

22. The following submissions have been made by the Applicant with regard to the domestic industry and standing:
  - i. The application has been filed by the Alkali Manufacturers Association of India (AMAI) on behalf of its members. The Association has 23 domestic producers of the subject goods as its members, which represent the entirety of the Indian industry.
  - ii. The following members of the Association have participated in the present investigation.
    - a. DCW Limited,
    - b. Grasim Industries Limited,
    - c. Gujarat Alkalies and Chemicals Limited,
    - d. SIEL Chemical Complex.
  - iii. The applicant domestic producers account for 44.61% of the total domestic production.
  - iv. The Applicant domestic producers have neither imported nor are related to the exporter or importer of the subject goods in India.
  - v. Out of the remaining producers, 16 producers have supported the continuation of the anti-dumping duty.
  - vi. Responding to the arguments regarding change in scope of domestic industry, it was submitted that some of the producers, which participated in earlier investigations, have been taken over by Grasim Industries and have provided data in the present investigation as units of Grasim.
  - vii. The scope of the domestic industry has been the same in each investigation, over the last four years.
  - viii. In response to the submission that support letters are not as per prescribed format, it is submitted that Trade Notice 11/2018 allows parties, which have not filed responses, to participate in the investigation. In any case, the provisions of Rule 5 are not applicable in sunset reviews.

- ix. The request for continuation of anti-dumping duty has been supported by Chemfab Alkalies Limited, Chemplast Sanmar Limited, DCM Shriram Limited, Durgapur Chemicals Limited, Gujarat Fluorochemicals Limited, Lords Chloro Alkali Limited, Meghmani Finechem Limited, Nirma Limited, Orient Paper Mills, Punjab Alkalies & Chemicals Limited, Reliance Industries Limited, Tamilnadu Petroproducts Limited, TATA Chemicals Limited, TGV SRAAC Limited, The Andhra Sugars Limited and The Travancore – Cochin Chemicals Limited.

#### **D.2. Submissions of the other interested parties**

- 23. The following submissions have been made by other interested parties with regard to the domestic industry and standing:
  - i. The Applicant association has been selectively using combination of member-producers based on circumstance, injury figures and timing of the investigation. While 13 producers had participated in the first investigation, and 8 in the original investigation, only 4 producers are participating in the present investigation.
  - ii. Applicant association must not be permitted to exercise its discretion to select only those producers that show injury.
  - iii. Producers included as domestic industry must not be based on their treatment of chlorine as co-product or by-product, which is directly related to the cost of production of such producers.
  - iv. The support letters filed by the members of AMAI do not provide information about their performance, which is in violation of Trade Notice No. 13/2018.
  - v. The petitioner has refused to follow the requirements of Trade Notice No. 13/2018, claiming that such trade notices do not supersede the law. However, such trade notices not being in conflict with the law, need to be followed for providing relevant information, as per Rule 6(4).

#### **D.3. Examination by the Authority**

- 24. Rule 2(b) of the Rules defines domestic industry as under:

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

- 25. The present SSR application has been filed by the Alkali Manufacturers Association of India (AMAI) on behalf of its members. The Association has 23 domestic producers of the subject goods as its members, which represent the entirety of the Indian industry.
- 26. The following members of the Association have participated in the present investigation:
  - a. DCW Limited,
  - b. Grasim Industries Limited,
  - c. Gujarat Alkalies and Chemicals Limited,

- d. SIEL Chemical Complex.

27. Following plants of Grasim Industries have provided relevant information:

- a. Ganjam
- b. Karwar
- c. Nagda
- d. Rehla
- e. Renukoot
- f. Veraval
- g. Vilayat

28. With the regard to the claim of the producers/exporters that the Applicant association has been selectively using combination of producers based on circumstance, injury figures and timing of the investigation, the Authority notes that the application has been filed by the Applicant association on behalf of its members. Grasim Industries Limited has taken over the plants of some of these producers, such as Bihar Caustic and Chemical Limited, Jayshree Chemicals Limited and Indian Rayon & Industries Limited. These plants have now participated as a part of Grasim. Further, there is no legal obligation on the Authority or the applicant to maintain the same scope of the domestic industry. The Authority is required to ascertain whether the applicant companies production meets the requirement of domestic industry under the law.

29. The Applicant producers collectively account for a major proportion, that is, 44.91% of the total domestic production. It is also noted that the Applicant producers are not related to any exporter or importer of the subject goods and have not imported the product under consideration. The Authority, therefore, holds that the Applicants constitute domestic industry under Rule 2(b) of the Rules.

## **E. CONFIDENTIALITY**

### **E.1. Submissions of the domestic industry**

30. The following submissions have been made by the Applicant with regard to confidentiality:

- i. The exporters have claimed excessive confidentiality and the non-confidential version of responses filed do not allow a reasonable understanding of the information filed.
- ii. The exporters have abused Rule 7 by claiming confidentiality regarding all relevant information, including names of the exporters, which were disclosed at the time of oral hearing. The confidentiality claims of the exporters are not limited to proprietary or sensitive information.
- iii. As much as 70-80% of the responses have been redacted and even publicly available information has been claimed confidential.
- iv. The Authority must not assume confidentiality of information and must examine whether the claim by the party is bona fide and germane to the rights and legitimate interests of the party or not.
- v. The exporters should not be allowed to assert that different standards should be followed for confidentiality claimed by the domestic industry and by the exporters.

- vi. The exporters have claimed almost the entirety of Part II of the questionnaire responses as confidential, which is essential for likelihood analysis.
- vii. The exporters have violated Trade Notice 10/2018 by claiming confidentiality regarding broad stage-wise manufacturing process, the raw materials used and the names of related parties engaged in production and sale of product under consideration.
- viii. The questionnaire responses do not disclose the channel of distribution followed by the exporters, which is essential to ascertain whether all entities forming part of such channel have participated in the investigation or not.
- ix. The domestic industry has justified the confidentiality claimed by it.
- x. The ICIS reports not being proprietary information of the domestic industry, but of the market research agency, are not amenable to disclosure. Further, prices used to determine normal value from such reports are already disclosed in the petition.
- xi. Information regarding trend of export prices has already been disclosed by domestic industry vide letter dated 30th May, 2020.
- xii. Disclosure of actual costs, prices, non-injurious price, interest and profits would adversely impact the petitioning domestic producers in inter-se competition, competition with other producers, and their ability to negotiate prices with their customers. Further, the Authority has also considered such information as confidential in its recent findings.
- xiii. The petitioner has disclosed that it is unaware of the average industry norms for productivity, inventory and return on investment.
- xiv. Information regarding R&D expenses and fund raised being for the company as whole and not attributable to product under consideration, is as per the balance sheet of the petitioner.
- xv. Selling price of the domestic industry in various regions is confidential and cannot be disclosed. However, price undercutting has been disclosed in range.
- xvi. Transaction-wise import data is to be provided only when it is not claimed confidential, as noted by CESTAT in Exotic Décor v. Designated Authority. Since the domestic industry has claimed confidentiality and has also submitted an undertaking under Trade Notice 7/2018, such data is not required to be disclosed.

## **E.2. Submissions by other interested parties**

- 31. The following submissions have been made by other interested parties with regard to confidentiality:
  - i. The petitioner has claimed excessive confidentiality and failed to disclose (i) value of production by other domestic producers, (ii) actual sales value, PBIT, interest and depreciation (iii) Average industry norms for productivity, inventory and return on investment (iv) R&D expenses, funds raised, (v) trend of export price, (vi) non-injurious price as a range, and (vii) Purchase quantity of product under consideration. This is inconsistent with the guidelines laid down under Trade Notice 10/2018.
  - ii. The petitioner has not disclosed ICIS reports, which have been used for construction of normal value.
  - iii. The petitioner has failed to provide transaction-wise import data despite repeated requests in the preliminary submissions, oral hearing and communication dated 8th October, 2020. As noted by the CESTAT in Exotic Décor vs. Designated Authority, the same was required to be provided in Excel format.

### **E.3. Examination by the Authority**

32. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection as per Rule 6(7).

33. 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."*

34. 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 in the form of public file. The information related to imports, performance parameters and injury parameters of domestic industry has 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.

35. 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. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

36. With regard to the claim of non-disclosure of the ICIS reports (which constitutes underline evidence used to support the figures of normal value adopted), it is noted that the applicant has not disclosed the same on the grounds that it is third party information,

and the prices used for determination of normal value (which constitutes information) have already been disclosed to the interested parties. The Authority therefore considers that non-disclosure of ICIS-LOR copy is justified. Insofar as DGCI&S data is concerned, the Authority notes that the same has also been disclosed to the interested party in so far as volume & value of imports from each of the country exporting to India is concerned. Further, the applicant has made available a complete list of transaction wise import data relied upon by the applicant to quantify volume and value of imports from individual countries. The interested parties have not established how these disclosures are insufficient for them to defend their interests in the present case. It is also noted that the Korean producer participating in the present investigation has reported volume of imports largely corroborating with the volume of imports reported in the DGCI&S. Further, it is noted that any interested party can obtain data independently from the DGCI&S and lodge its own counter claim with regard to volume and value of imports. Above all, the Authority has not adopted the information provided by the applicant. The Authority has independently called information from the DGCI&S and DG Systems, corroborated the same with various information filed by various interested parties and thereafter adopted its own information in the present final findings.

## **F. MISCELLANEOUS ISSUES**

### **F.1. Submissions by other interested parties**

37. The following submissions have been made by the other interested parties:

- i. The Authority has conducted 19 separate investigations on imports of subject goods from various countries, which indicates abuse of the trade remedial mechanisms.
- ii. Continued protection to the domestic industry has been detrimental for the user industry that face increased in costs of products as well as for the domestic industry itself, which has failed to make improvements in their capacities, efficiencies or technologies.
- iii. Caustic soda contributes 20% of the cost of alumina, and thus, the continuation of duties has an adverse impact. Downstream industry like Alumina is already at disadvantage due to inverted duty structure on raw material.
- iv. The user industry has made sincere efforts to source significant volume of subject goods from the domestic industry. However, the domestic industry is reluctant to enter into long term contracts with the users at reasonable prices, which are being provided to them by the foreign producers, and has instead demanded huge premiums for such commitments.
- v. The downstream alumina industry is already suffering price crunch since 2018 and with continuation of duties, the industry is unlikely to compete in the market.
- vi. Restrictions on imports would result in monopoly pricing by the domestic producers, as happened in 2018-19.

#### Other issues

- vii. Hanwha Solutions Corporation, through a separate name change application had intimated the Hon'ble Designated Authority that there had been a name change with effect from 06 January 2020 whereby it was previously known as Hanwha Chemical Corporation and is currently known as Hanwha Solutions Corporation.

- viii. The Hon'ble Designated Authority vide communication dated 06 August 2020 had sought certain clarifications and documents with respect to the change in name.
- ix. Hanwha Solutions Corporation accordingly provided a detailed response dated 27 August 2020 along with all necessary documentation relating to the change in name.

#### **F.2. Submissions of the domestic industry**

- 38. The domestic industry has submitted as under, in response to contentions raised by the other interested parties:
  - i. Regarding the claim that 19 investigations have been conducted, it was submitted that anti-dumping duty has been imposed based on facts established before the Authority.
  - ii. The user industry cannot claim right to dumped imports citing increased costs, since unfair priced imports create an unfair competition in the market.
  - iii. The responding user, Vedanta Limited, has not been substantiated adverse impact of duty with evidence, while other users have not objected to continuation of duties.
  - iv. Issues pertaining to inverted duty structure should be raised by the user before appropriate forum, and not the Authority.
  - v. The user has not established its claimed efforts to locally source subject goods though any evidence. It furthers the implication that the user has interest in imports available at dumped prices.
  - vi. Difficulties faced by users due to other factors are irrelevant to present investigations. Numerous investigations being conducted relating to aluminum products imply dumping of such products causing hardships to the users.

#### **F.3. Examination by the Authority**

- 39. With regard to the contention of the other interested parties regarding the multiple investigations on imports of subject goods and long duration of the duties imposed, the Authority notes that the purpose of anti-dumping duty is only to create a level playing field and to provide relief to domestic industry against injurious dumping. The present investigation has been initiated to examine the likelihood of continuation or recurrence of dumping or injury, in the event of expiry of duty. Should the Authority find that dumping and injury are likely to continue or recur, in the absence of duties, the anti-dumping duties shall be extended, notwithstanding the period of imposition of duties or the number of investigations. The Authority also notes that there is no evidence of monopoly pricing by the domestic industry as a result of anti-dumping duties in force. In fact, there are a large number of domestic producers of the product in the Country.
- 40. With regard to issues relating to change in the name of Hanwha Chemical Corporation to Hanwha Solutions Corporation, it is noted that no comments have been filed by any other interested parties.
- 41. The Authority notes that a cooperating exporter, i.e. Hanwha Chemical Corporation has undergone a change in name with effect from 06 January 2020, to Hanwha Solutions Corporation on account of merger of two entities (that were a part of the Hanwha Group) with Hanwha Chemical Corporation. It is noted that the other two entities were not engaged in manufacture, distribution import or export of the product under consideration.

The Authority further notes that the name change is conducted pursuant to the applicable laws in Korea.

42. Having carefully perused all the supporting documentation submitted by Hanwha Solutions Corporation, the Authority also notes that this merger has not resulted in a change of the ownership of the erstwhile company and there is no material impact on the operations relating to the product under consideration. Accordingly, the change in name from Hanwha Chemical Corporation to Hanwha Solutions Corporation is reflected in the final findings.

## **G. NORMAL VALUE, EXPORT PRICE AND DETERMINATION OF DUMPING AND DUMPING MARGIN**

### **G.1. Submissions of the domestic industry**

43. The following submissions have been made by the domestic industry with regard to normal value, export price and dumping margin:

- i. There is continued dumping of the product under consideration from the subject countries and the exporters have a history of dumping.
- ii. Since the producers from China PR have not demonstrated that they are operating under market economy conditions, the normal value should be determined on the basis of provisions of para 7 of Annexure – I.
- iii. Export prices may be determined based on the responses of co-operating exporters, subject to fulfilment of value chain condition. However, since the responding producer from China PR is not even listed as a supplier in import data, it casts a doubt over fulfillment of value chain condition.
- iv. Korea RP being a country under investigation, cannot be considered as an appropriate surrogate country.
- v. Availability of data of Korean producer does not imply acceptance of the data and as such, the Authority is required to evaluate conditions under Para 7 of Annexure-I as well as the conditions for determination of surrogate country.
- vi. The respondents have not provided evidence to the fact that Korea RP and China PR are at same level of economic and product development. Thus, selling price of Korea RP cannot be considered as normal value for China PR. Further, exports to India from Korea RP being dumped, cannot also be used for determination of normal value for China PR.
- vii. Price of subject goods in Chinese Taipei have been provided based on the IHS Market report which gives a macro-view of the prices prevailing in the market
- viii. The dumping margin of Hanwha Solutions Corporation being negative in the original investigation itself, the petitioner accedes that no duty can be levied against its exports in the present investigation.
- ix. The duty for the remaining producers/exporters from Korea RP should be determined based on the information made available in the petition.

### **G.2 Submissions of other interested parties**

44. The following submissions have been made by other interested parties with regard to normal value, export price and dumping margin:

- i. The responses filed by the exporters show that there is no dumping by the cooperative exporters.
- ii. The responses filed by the exporters should be considered for the purpose of determination of normal value, export price and dumping margin.
- iii. Since in the present case, the data regarding domestic and third country sales as well as cost of production in Korea RP is available before the Authority, Korea RP should be considered as an appropriate surrogate country. This is consistent with the provisions of Annexure – I, the Manual of SOP and the decision of the Supreme Court in Shenyang Matsushita S. Battery Co. Ltd. v. Excide Co. Ltd and as per practice of the Authority in previous cases.
- iv. Korea RP is the appropriate surrogate country as both the countries are at same level of economic development and similar product development. Further, the market for caustic soda in both countries is at the same level of development, using similar production technologies, with similar capacities as well as closely comparable import volumes subject to the same customs duty in India.
- v. Since petitioners have admitted that direct evidence of selling price in Chinese Taipei is not available and there is no evidence to show that it is comparable to China, there is no basis for selection of Chinese Taipei as an appropriate surrogate country.

### **G.3. Examination by the Authority**

45. As per section 9A(1)(c) of the Act, the normal value in relation to an article means:

*(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

*(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –*

*(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

*(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub- section (6):*

*Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.*

46. The Authority sent questionnaires to the known exporters/producers from the subject countries, advising them to provide information in the form and manner prescribed. The

following producers/exporters from subject countries have filed exporter's questionnaire response:

- a. Bohai Chemical (HK) Limited, China PR (Exporter of Chinese origin goods)
- b. Tianjin Bohai Chemical Industries Import and Export Corp., China PR (Exporter)
- c. Tianjin Dagu Chemical Co., Ltd., China PR (Producer)
- d. Hanwha Solutions Corporation, Korea RP (Producer)
- e. Mitsubishi Corporation, Japan (Exporter of Korean origin goods)
- f. Tricon Energy Limited, USA (Exporter of Korean and Chinese origin goods)

It is noted that the dumping margin for Hanwha Solutions Corporation (Hanwha), for exports through Tricon Energy Limited, was found de-minimis in the original investigation.

### **G.3.1. Determination of Normal Value**

#### **Market economy status for China PR**

47. Article 15 of China's Accession Protocol provides as follows:

*“(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 V of 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."*

48. 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 Anti-Dumping Agreement read with obligation under 15 (a) (i) of the Accession Protocol require criterion stipulated in para 8 of the Annexure I of the Indian 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 no producer/exporter from China PR has claimed market economy status in the present sunset review investigation. Accordingly, the normal value computation is required to be done as per provisions of para 7 of Annexure I of the Rules. The normal value and export price for all the producers/exporters from the China PR have been determined as below.

Normal value for China PR

49. The Authority notes that none of the producers / exporters from China PR have filed the supplementary questionnaire response to rebut the presumptions as mentioned in para 8 of Annexure 1 of the Rules. Under these circumstances, the Authority has to proceed in accordance with Para 7 of Annexure I to the Rules in this regard.
50. While the domestic industry has claimed that Chinese Taipei should be claimed as the appropriate surrogate country, other interested parties have submitted that Korea RP should be considered for this purpose. However, the Authority notes that the none of the interested parties have provided sufficient information to establish that Chinese Taipei or Korea RP can be considered as surrogate country, having regard to the requirements laid down under para-7 of Annexure-I, both with regard to the same level of development of the country, or level of development of product. In the absence of any evidence in this regard, the Authority has determined normal value for producers/exporters from China PR on the basis of price paid or payable in India for like products as per Para 7 of Annexure I.
51. In view of the above, the normal value for the product under consideration imported from China PR into India is determined based on cost of production, as optimized for the domestic industry, with reasonable additions for selling, general & administrative expenses and profit margin. Accordingly, the normal value has been constructed for all producers and exporters in China PR for the product under consideration during the period of investigation as given in the dumping margin table.

Normal Value for producers/exporters of subject goods from Korea RP

Hanwha Solutions Corporation, Tricon Energy Limited and Mitsubishi Corporation

Normal Value

52. During the POI, Hanwha Solutions Corporation (producer of the subject goods) sold the PUC directly to customers in the domestic market. The Authority notes that Hanwha made domestic sales to both related and unrelated customers. The Authority further notes that the price to related customers is marginally higher than that from unrelated customers. Accordingly, all the domestic sales have been considered for the purpose of determining normal value. It is also noted that sales of Hanwha Solutions Corporation are in sufficient quantity in the domestic market.
53. In order to determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to cost of production of subject goods. In case profit making transactions are more than 80% then the Authority considers all the transactions in the domestic market for the determination of the normal value. Where the profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value. The Authority notes that \*\*\*% of the domestic sales found to be profitable. Therefore, all the sales have been considered for the purpose of determining normal value. The Normal value determined on is mentioned in the dumping margin table. .

### **G.3.2. Determination of Export Price**

#### **Export price for producers/exporters of subject goods from China PR**

#### **Tianjin Dagu Chemical Co., Ltd., Tianjin Bohai Chemical Industries Import & Export Corporation, and Bohai Chemical (HK) Limited and Tricon Energy Limited**

54. During the POI, all sales by Tianjin Dagu Chemical Co., Ltd to India for the PUC were made through Tianjin Bohai Chemical Industries Import & Export Corporation, Bohai Chemical (HK) Ltd and Tricon Energy Limited. The Authority notes that all the exporters involved in the trade channel have filed their separate questionnaire response. The Authority notes that for sales from Tianjin Dagu Chemical Co. Ltd. has exported \*\*\*MT of the PUC to India during period of investigation.
55. The Authority has conducted the profitability test of the all the cooperating trading companies namely Tianjin Bohai Chemical Industries Import & Export Corporation, Bohai Chemical (HK) Ltd and Tricon Energy Limited. The Authority has determined the ex-factory export price based on the export price of trader after taking into consideration the surveyor cost, and profit / loss of the trader(s) (wherever applicable). Further, price adjustments have been allowed on account of ocean freight, insurance, inland freight, port and other related expenses. The net export price after these adjustments is given in the dumping margin table.

#### **Other producers and exporters from China PR**

56. The export price for other non-cooperating exporters from China PR has been determined as per best facts available taking into account the data of the DGCI&S data and questionnaire response of the co-operating exporters and the same is mentioned in the dumping margin table.

#### **Export price for producers/exporters of subject goods from Korea RP**

### **Hanwha Solutions Corporation, Tricon Energy Limited and Mitsubishi Corporation**

57. Hanwha Solutions Corporation (“Hanwha”) has filed questionnaire response along with its unrelated trading companies, namely, Tricon Energy Limited (“Tricon”) and Mitsubishi Corporation (“Mitsubishi”). The Authority notes that Hanwha has exported \*\*\*MT of the PUC during period of investigation.

58. The Authority has conducted the profitability test of the all the cooperating trading companies namely Tricon and Mitsubishi. All the trade channels of exports to India are found to be profitable, therefore, the Authority has considered the prices of Hanwha to determine the ex-factory export price. Further, the producer has claimed Surveyor Cost, Handling Charges, Credit Cost, Bank Charges and Domestic Brokerage as post factory expenses for making exports to India which has been accepted by the Authority. The net export price after these adjustments is given in the dumping margin table.

### **Other producers and exporters from Korea RP**

59. The export price for other non-cooperating exporters from Korea RP has been determined as per best facts available taking into account the data of the DGCI&S data and questionnaire response of the co-operating exporters and the same is mentioned in the dumping margin table.

#### **G.3.3. Dumping Margin**

60. Based on normal value and export price determined as above, the dumping margin for producers/exporters from China PR and Korea RP has been determined by the Authority and the same is provided in the table below:

Country	Producers	Normal Value USD/MT	Export Price USD/MT	Dumping Margin (USD/MT)	Dumping Margin %	Dumping Margin % Range
Korea RP	Hanwha Solutions Corporation	***	***	***	***	(0-10)
Korea RP	Others	***	***	***	***	0-10
China PR	Tianjin Dagu Chemical Co Ltd	***	***	***	***	0-10
China PR	Others	***	***	***	***	10-20

61. It is noted that the dumping margin in case of Hanwha Solutions Corporation is negative.

#### **H. INJURY AND CAUSAL LINK**

#### **H.1. Submissions of the domestic industry**

62. The following submissions have been made by the domestic industry with regard to injury, likelihood and causal link:

- i. There is continued dumping of the product under consideration from the subject countries and the exporters have a history of dumping.
- ii. Continued dumping of subject goods for more than 18 years shows that quantum of duties is insufficient to dissuade dumping.
- iii. The exporters of the product under consideration have also dumped the subject goods in third countries.
- iv. Despite duties in force, there is an increase of 108% in volume of dumped imports over the injury period. The volume of imports is the highest in the present period of investigation, when compared over the injury period.
- v. The rate of increase in imports has outpaced the growth in demand.
- vi. The imports have increased despite mandatory BIS certification, and even excluding the period affected by such mandatory certification requirements. It is therefore without any basis that the BIS standards have led to a decline in imports.
- vii. The dumped imports have also increased in relation to production and consumption.
- viii. Further, the price of the subject imports has declined very steeply, even though there has been no decline in the cost of the domestic industry.
- ix. Not only has the price to India reduced, but also, there is a decline in price of exports from the subject countries to third countries.
- x. While the price undercutting on an average basis is negative, it is positive on a region-wise basis.
- xi. While the performance of the domestic industry improved till 2018-19, it shows a decline in the period of investigation, as the imports increased. This shows that the imports continue to be impacted by the subject imports.
- xii. Not only are there surplus capacities of the subject goods in the subject countries, the exporters are also expanding capacities further. China PR alone has surplus capacities of about 94.5 lakhs MT, as against a demand in India is only 36 lakhs MT.
- xiii. While significant capacities have been created for exports, the total exports from the subject countries have suffered a decline whereas exports to India have increased. Thus, in the event of expiry of duty, India is likely to serve as an alternate market to absorb these exports.
- xiv. The responses filed by the exporters also show that while their exports to India have increased, their total sales have suffered a setback.
- xv. Despite anti-dumping duties in force, India continues to be a major market for the exporters in the subject countries. Thus, in the event of expiry of duty, the exporters are likely to focus on this market.
- xvi. Further, India is a price attractive market for the exporters in the subject countries. Thus, in the event of cessation of duty, exports presently made to third countries are likely to be diverted to India.
- xvii. If the lower priced imports from other countries are diverted to India, there is likely to be a significant impact on the volumes or prices, or both of the domestic industry.
- xviii. The present investigation being a sunset review, there is no requirement to establish a causal link between the likely dumping and likely injury as observed by the Appellate Body in United States – Anti-dumping measures on OCTG from Mexico.

- xix. The domestic industry is not likely to suffer injury due to any other factor.
- xx. If the domestic industry seeks to maintain its prices, the imports are likely to take away its market share, leading to a decline in its production, sales and capacity utilization. However, if the domestic industry seeks to retain its customers, its profitability is likely to suffer significantly and it is likely to face losses and negative return on investment.
- xxi. Contrary to the submissions of the respondents, injury examination is required to be conducted for defined domestic industry and not for industry as whole as per Rule 11(2) and Panel report in EC – Bed Linen. Even the Appellate Body in US – Hot-Rolled Steel Products has also noted that the injury analysis has to be undertaken for the defined domestic industry.
- xxii. There is no requirement that the domestic industry must have suffered 'injury' in a sunset review, and the Authority is required to examine the likelihood of continuation or recurrence of dumping and injury in event of cessation of duty.
- xxiii. Exports to India have increased while exports to other countries have declined, implying imports are likely to increase in future, despite requirements of public procurement and BIS certification.
- xxiv. BIS licensing is a standardization of quality procedure and not a barrier. Further, exporters were given a period of 4 months to obtain such license before it was made mandatory.
- xxv. BIS licensing authority has issued 18 licenses to foreign producers/exporters. Failure of the exporter to obtain license even after 3 years is due to their inability to satisfy conditions of license and not due to any delay by the licensing authority.
- xxvi. Contrary to the contentions of the respondents, BIS licenses were initially issued for a period of 2 years but are renewable for upto 5 years through a simple and shorter procedure, enabling the exporters to renew license without any difficulty.
- xxvii. Grievances regarding the delay in issuance of BIS license should be raised before the appropriate forum and not before the Authority.
- xxviii. Domestic procurement requirement applicable to only a few public sector consumers, cannot alter market dynamics since major users from the private sector are free to procure foreign goods. In any case, NALCO has continued to float global tenders.
- xxix. Respondents have failed to establish their claim, with actual data, that imports have declined subsequent to the public procurement order.
- xxx. Petitioner has provided post POI data, for the period January to June 2020, vide submissions dated 16th October 2020.
- xxxi. The market share of imports has not increased marginally but has doubled over the injury period, contrary to the contentions of the respondents.
- xxxii. Responding to the contention that imports increased as producers in other countries did not have BIS licenses, it was submitted that there was sufficient capacity in the country to meet the demand in the country and thus, the goods could have been sourced domestically by users.
- xxxiii. As regard contention that increase in dumped imports is required to be shown, it was submitted that the petitioner has demonstrated positive dumping margin and increase in dumped imports from both countries.
- xxxiv. Petitioner has highlighted the imports made for Vedanta and due to varied prices in different regions, a comparison should be made accordingly. Reference to Rule 11(3) and proviso to Rule 2(b) is not required.

- xxxv. Prices of the subject goods increased only for a brief period and have steeply declined post 2017-18.
- xxxvi. The domestic sales of the domestic industry have declined during the period of investigation.
- xxxvii. Improvement in performance, as reported in annual report of Grasim and GACL does not relate to the period of investigation. The performance has deteriorated in the period of investigation and there have been financial losses in the subsequent period.
- xxxviii. Likelihood analysis is required to be done for subject countries as whole and not individual exporters. The fact that individual exporters are facing nil rate of duty is irrelevant for such analysis.
- xxxix. Domestic industry was able to achieve capacity utilization of 93% in 2015-16, contrary to the claim of the respondents that 85-90% capacity utilization is optimum. However, even if 85-90% is considered as the optimum utilization, the capacity utilization in China PR was less than 80%, implying significant unutilized capacities.
- xl. The petitioner having established surplus capacities with producers, price attractiveness of Indian market need not be separately established since had the producers been capable to export further quantities to other markets, they would have fully utilized their capacities, in order to cover their fixed costs.
- xli. Since the exporters have not found a market in third countries at higher prices and have been forced to lower their prices, they would be willing to divert such exports to India even at a slightly higher price. The price of exports to third countries demonstrates the minimum price, at which the exporters would be willing to export to the Indian market.
- xlii. Data on record demonstrates that India is second largest market following Australia for exporters in Korea RP. Further, as per respondents' own admission, price of exports to India being lower than price of exports to Australia, implies that the Indian market is more lucrative for the exporters.
- xliii. Information regarding inventories of the foreign producers is confidential in nature, and the domestic industry does not have access to the same. Further, since no likelihood has been claimed on such ground, the information is irrelevant in present case.

## **H.2. Submissions of other interested parties**

- 63. The following submissions have been made by the other interested parties with regard to injury, likelihood and causal link.
  - i. In the absence of relevant information from supporters, an effective analysis of the industry as whole, as per Rule 4(1)(c)(ii), Section 9B of the Customs Tariff Act and ruling of the Appellate Body in US – Hot Rolled Steel, is not possible. The Authority should call for information from other producers as well.
  - ii. The petitioner has not provided post-period of investigation data, which is necessary for the likelihood analysis. If the petitioner is allowed to file data at such belated stage, appropriate time ought to be allowed to exporters to make comments and file their own data.
  - iii. The domestic industry has itself acknowledged that it has not suffered injury. Absence of injury to the industry implies that the anti-dumping duties have served the purpose and must be allowed to expire.

- iv. The petitioner has relied on the ruling of the Appellate Body in US – OCTG from Mexico, to claim that there is no requirement to show causal link. However, it has failed to show likelihood of dumping or injury, which is the prerequisite under the aforesaid ruling.
- v. The petitioner has claimed an increase of 7703%, which is misleading as the imports were lower in 2018-19 due mandatory BIS certification. As compared to the base year, the market share of imports has increased only marginally.
- vi. The share of imports from subject countries has increased due to lack of BIS certification by producers of other countries and is not a long-term trend.
- vii. The petitioner is not required to show increased imports, but increase in dumped imports. However, in the present case, the exporters have not engaged in dumping.
- viii. The data relating to price undercutting on the basis of regional analysis has been claimed confidential.
- ix. Price undercutting based on prices in East India is not appropriate as the petitioner has not established that the conditions provided under Rule 11(3) and proviso to Rule 2(b), regarding isolated market, have been satisfied. The petitioner was required to show that (a) East India operates as an isolated market (b) the petitioners sell all or nearly all their production only in East India (c) the demand in East India is not met by producers in any other part of India. However, of all petitioners, only one plant is located in East India, which could not have led to creation of an isolated market. Further, East India is an undefined territory and there is significant ambiguity on what constitutes this region.
- x. The profits and cash profits of the domestic industry have increased, even after resumption of imports post BIS certification and despite positive undercutting in certain regions.
- xi. The annual report of Grasim (2017-18) shows that prices of caustic soda have increased due to (i) weather related disruption in US; (ii) phasing out of mercury-based technology in Europe, and (iii) capacity shutdown in China due to environmental concerns.
- xii. The production and sales of the domestic industry have increased.
- xiii. The annual report of Grasim (2018-19) and for GACL (2017-18) also show that their performance has improved.
- xiv. The petitioner has not provided sufficient evidence to demonstrate likelihood of continuation or recurrence of dumping or injury in the form of significant rate of increase of imports, sufficient freely disposable capacities, imminent increase in capacities, price attractiveness of Indian market or significant inventories.
- xv. Since the exporters are already facing nil rate of duty, cessation of duty will have no impact on volume of imports.
- xvi. Non-tariff barriers like BIS certification are likely to discourage imports and thus, the imports are not likely to increase as a result of imposition of duties. Continuation of BIS certification would result in a substantial decline in the imports due to the highly technical procedural and time-consuming requirements and associated costs of obtaining certification. Foreign producers are required to undergo a renewal process for licensing in the 3rd year and every alternate year thereafter, bearing significant administrative and application costs.
- xvii. Owing to challenges associated with the certification, major producers have elected not to apply for BIS certification and less than 5% of the global caustic soda producers have received licenses.

- xviii. Grant of BIS licenses to foreign manufacturers is now being reviewed in a manner such that no foreign manufacturers will be granted such further licenses or provided extensions of existing licenses. Licenses to manufacturers have remained pending even after one year of the application, and close to a year since completion of all related factory inspections.
- xix. The DPIT has imposed limitations on public procurement from foreign suppliers, which further indicates that imports are not likely to increase in the event of cessation of duty, particularly since major consumers like NALCO are now prohibited from foreign procurement.
- xx. Expansion of capacity claimed by the petitioner is based on press releases of other companies and no evidence has been provided for cooperative exporters.
- xxi. Capacity utilization of 85-90% is often considered optimal in most chemical industries. Even the optimal capacity utilization of the domestic industry was 89% at its peak performance in 2018-19, and has remained between 85-90% for the last 10 years.
- xxii. In the sunset review investigation into imports of caustic soda, the Designated Authority noted that mere surplus capacity is not sufficient to show likelihood and further evidence is required to show that injury would occur.
- xxiii. Since the cooperative exporters have not practiced dumping in last five years or during earlier review, there is no question of likelihood of continuation or recurrence of dumping.
- xxiv. Even if there are surplus capacities in the subject countries, the petitioner is required to show that India is a price attractive market.
- xxv. The petitioner has not demonstrated price attractiveness of the Indian market. Rather, it has referred to exports priced below the non-injurious price of the domestic industry.
- xxvi. Even if the exports to third countries were to shift to India, they would not shift to India at the same price, contrary to the claims of the petitioner.
- xxvii. Since the cooperative exporters do not have any duties, they would have no incentive to shift exports to India, in the event of expiry of duty.
- xxviii. Significant volumes are being imported from Japan, Iran and Qatar.
- xxix. An analysis of exports from Korea RP as a whole to other countries filed by the cooperating exporters shows that Australia accounts for significant volumes of exports for lye. Though the price of such exports is lower than price of exports to India, they contribute significantly higher volumes. Other major markets for lye are USA, United States Minor Outlying Islands, Malaysia and Japan. Further, major markets for flakes are Vietnam, Indonesia, USA, Thailand and Bangladesh, while the Indian market does not have much demand for it.
- xxx. The petitioner has not provided any evidence of inventories of the subject goods. The responses filed show that the cooperative exporters are not maintaining significant inventories.

### **H.3. Examination by Authority**

- 64. The Authority has taken note of the arguments and counter-arguments of the interested parties with regard to injury to the domestic industry. The injury analysis by the Authority hereunder addresses the various submissions made by the interested parties.

65. Rule 11 of the Rules read with its Annexure-II thereto 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."
66. Rule 23 of the Rules provides that the provisions of Rule 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall apply mutatis mutandis in case of a review. In case the performance of the Domestic industry shows that it has not suffered injury during the current injury period, the Authority shall determine whether cessation of the present duty is likely to lead to recurrence of injury to the Domestic industry.
67. The Authority has examined current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country. It has been examined as to whether there is an increase in imports, in absolute terms or in relation to production or consumption. 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 in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure-II of the Rules. The Authority has taken note of various submissions of the domestic industry and other interested parties, and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the parties.
68. With regard to the contention of the other interested parties regarding lack of information regarding supporters, the Authority notes that as per Rule 11(2) of the Rules, Authority is required to "*determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry*". Therefore, the evaluation of injury is required to be restricted to the defined domestic industry, and the performance of other producers is irrelevant. Since all the information essential for the determination of injury to the domestic industry is made available by the participating producers, the information about performance of supporting producers is irrelevant for such analysis.

#### **I. Assessment of Demand / Apparent Consumption**

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

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised(Annl)
<b>Including captive</b>						
Domestic industry	MT	13,77,694	13,81,792	15,52,722	11,47,602	15,30,136
Other producers	MT	15,00,689	16,50,367	17,70,249	13,44,626	17,92,835
Subject imports	MT	55,210	61,030	1,542	86,056	1,14,741
Other imports	MT	3,69,378	3,59,549	2,04,909	1,46,086	1,94,782
Demand	MT	33,02,971	34,52,738	35,29,422	27,24,370	36,32,494
<b>Excluding captive</b>						
Domestic industry	MT	10,06,750	10,24,376	11,58,389	8,11,538	10,82,051
Other producers	MT	15,00,689	16,50,367	17,70,249	13,44,626	17,92,835
Subject imports	MT	55,210	61,030	1,542	86,056	1,14,741
Other imports	MT	3,69,378	3,59,549	2,04,909	1,46,086	1,94,782
Demand	MT	29,32,027	30,95,322	31,35,089	23,88,306	31,84,408

70. It is seen that the demand for the subject goods has been steadily increasing throughout the injury period and has increased by 10% over the period.

## **II. Volume Effects of Dumped Imports**

71. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the transaction wise import data procured from DGCI&S. The import volumes of the subject goods from subject country and share of the dumped import during the injury investigation period are as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annl.
Subject imports	MT	55,210	61,030	1,542	86,056	1,14,741
China	MT	40,326	42,357	1,542	43,957	58,609
Korea RP	MT	14,884	18,673	-	42,099	56,132
Other imports	MT	3,69,378	3,59,549	2,04,909	1,46,086	1,94,782
Total Imports	MT	4,24,588	4,20,579	2,06,451	2,32,142	3,09,523
<b>Imports in relation to</b>						
Indian production	%	2%	2%	0%	3%	3%
China PR	%	1%	1%	0%	2%	2%
Korea RP	%	1%	1%	0%	2%	2%
Consumption	%	2%	2%	0%	3%	3%

China PR	%	1%	1%	0%	2%	2%
Korea RP	%	0%	1%	0%	2%	2%
Total imports	%	13%	15%	1%	37%	37%
China PR	%	9%	10%	1%	19%	19%
Korea RP	%	4%	4%	0%	18%	18%

72. It is seen that:

- i. Volume of imports from subject countries increased till 2017-2018 but declined steeply in 2018-19. This decline was apparently due to the mandatory requirement to comply with BIS standards. However, post such decline, the imports have increased steeply in the period of investigation.
- ii. Even when compared to the beginning of the injury period, that is, pre-introduction of BIS, the imports have shown an increase during the period of investigation.
- iii. However, imports have increased very marginally in relation to production and consumption over the injury period.
- iv. The interested parties contended that mandatory requirements of BIS standards led to decline in imports. The domestic industry contended that it was only for a short period that none of the foreign producers had licence and it was also their own lack of efforts to obtain licences in a timely manner. The Authority considers it appropriate to ignore the year 2018-19 in so far as it concerns volume of imports in absolute terms and in relation to production and consumption in India.

### **III. Price Effect of Dumped Imports**

73. In terms of Annexure II (ii) of the Rules, with regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison has been made between the landed price of imports from the subject country with the net sales realization of domestic industry for the subject goods.

#### **a. Price Undercutting**

74. To determine price undercutting, a comparison has been made between the landed value of the product and average selling price of the domestic industry, net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex-factory level.

Particulars	Unit	2016-17	2017-18	2018-19	POI
China PR					
Selling price	Rs/MT	***	***	***	***
Landed price	Rs/MT	27,178	34,476	39,317	34,985
Price undercutting	Rs/MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	% Range	0-10	0-10	Negative	Negative

Korea RP					
Selling price	Rs/MT	***	***	***	***
Landed price	Rs/MT	27,702	37,604	-	33,200
Price undercutting	Rs/MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	% Range	0-10	Negative	-	Negative
Subject countries					
Selling price	Rs/MT	***	***	***	***
Landed price	Rs/MT	27,319	35,433	39,317	34,112
Price undercutting	Rs/MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	% Range	0-10	0-10	Negative	Negative

75. It is noted that the imports were not undercutting the prices of the domestic industry. The selling price of the domestic industry was above the landed price of imports. The domestic industry claimed that this was due to consideration of weighted average selling price of the domestic industry, when imports were limited only in one region. The selling price of the domestic industry in different regions varied significantly, due to difference in freight costs. The imports have been made by Vedanta Limited located in the East. Accordingly, if the price of domestic industry in East India is compared to the landed price of imports, the price undercutting is positive. However, the Authority considers net ex-factory selling price of the domestic industry for determination of price undercutting and considers it appropriate to follow the consistent practice in this regard. Thus, it is noted that price undercutting during the POI is negative from all subject countries.

#### b. Price Suppression / Depression

76. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the information given by the domestic industry for the changes in the costs and prices over the injury period has been compared with the landed value to see the desired effect.

Particulars	Unit	2016-17	2017-18	2018-19	POI
Cost of sales	Rs/MT	***	***	***	***
Trend	Indexed	100	111	112	113
Selling price	Rs/MT	***	***	***	***
Trend	Indexed	100	126	130	112
Landed price	Rs/MT	27,319	35,433	39,317	34,112
Trend	Indexed	100	130	144	125

77. It is seen that the landed price of imports, cost of sales and selling price of the domestic industry increased till 2018-19. However, while the cost of sales remained in similar region in the POI, the import price and selling price of the domestic industry declined significantly in the POI. However, the landed price was above the cost of sales and selling price of the domestic industry.

#### **IV. Impact on Economic Parameters of the Domestic Industry**

78. 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. Various injury parameters relating to the domestic industry are discussed herein below.

##### **a. Production, Capacity, Capacity Utilization and Sales Volumes**

79. The performance of the domestic industry with regard to production, domestic merchant sales, captive consumption, capacity and capacity utilization is as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annl.
Capacity	MT	15,31,160	15,55,261	17,42,350	13,08,013	17,44,017
Production	MT	13,82,905	14,06,481	15,45,924	11,67,738	15,56,984
Capacity utilization	%	90%	90%	89%	89%	89%
Domestic sales	MT	12,77,886	12,62,893	14,30,185	10,28,833	13,71,778
Captive sales	MT	***	***	***	***	***

80. It is seen though the capacity of the domestic industry increased over the years. The domestic industry was able to increase its production, and largely maintain its capacity utilization.

##### **b. Market Share in Demand**

81. Market share of alleged dumped imports and domestic industry have been examined as below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
<b>Share in demand (including captive)</b>					
Domestic industry	%	42%	40%	44%	42%
Other producers	%	45%	48%	50%	49%
Subject imports	%	2%	2%	0%	3%
Other imports	%	11%	10%	6%	5%
<b>Share in demand (excluding captive)</b>					
Domestic industry	%	34%	33%	37%	34%
Other producers	%	51%	53%	56%	56%

Subject imports	%	2%	2%	0%	4%
Other imports	%	13%	12%	7%	6%

82. It is seen that the market share of the domestic industry had improved till 2018-19 but has declined during the period of investigation, as the imports increased and gained market share. Overall, there is no decline in the market share of the domestic industry during the injury period while market share of the imports have shown a marginal increase.

**c. Inventories**

83. Inventory position of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Average inventory	MT	13,791	18,593	20,351	19,522
	Indexed	100	135	148	142

84. It is seen that the average inventory has increased over the injury period except in comparison to 2018-19.

**d. Profits, Cash Profits and Return on Capital Employed**

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

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annul
Cost of sales	Rs/MT	***	***	***	***	***
	Indexed	100	111	112	113	113
Selling price	Rs/MT	***	***	***	***	***
	Indexed	100	126	130	112	112
Profit / loss	Rs/MT	***	***	***	***	***
	Indexed	100	183	199	106	106
Profit / loss	Rs Lakhs	***	***	***	***	***
	Indexed	100	181	222	113	113
Cash profits	Rs Lakhs	***	***	***	***	***
	Indexed	100	168	205	118	118
Return on capital employed	%	***	***	***	***	***
	Indexed	100	152	190	102	102

86. It is seen that profits and cash profits earned by the domestic industry show an increase upto the year 2018-29. However, post 2018-29, the profitability of the industry has

reduced sharply in the period of investigation. Further, the performance of the domestic industry shows deterioration even after ignoring 2018-19. However, the operating performance of the domestic industry has not been adversely affected during the POI as compared to base year though it has declined significantly in the POI as compared to the preceding year.

**e. Employment, Wages and Productivity**

87. The Authority has examined the information relating to employment, wages and productivity, as given below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annl.
No. of employees	Rs/MT	4,728	4,899	5,440	5,329	5,329
Wages	Rs Lakhs	***	***	***	***	***
	Indexed	100	108	121	91	122
Productivity per day	MT/Day	3,841	3,907	4,294	4,325	4,325

88. It is seen that the number of employees has increased over the injury period, leading to an increase in total wages. Further, the productivity of the domestic industry has also improved over the period.

**f. Growth**

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Considering previous year	Considering 2017-18
Production	%	-	2	10	1	11
Domestic Sales	%	-	(1)	13	(5)	9
Profit/Loss	%	-	81	42	(109)	(67)
Cash Profit	%	-	68	37	(87)	(50)
Return on capital employed	%	-	52	38	(87)	(50)

89. It is seen that the performance of the domestic industry in both volume and profitability parameters has shown growth upto 2018-19. However, during the period of investigation, the domestic industry has witnessed negative growth in its sales, and its profitability parameters. Considering the BIS licence requirements in 2018-19, the Authority also determined growth considering the parameters in 2017-18 and found that the growth of the domestic industry in the POI was negative as compared to 2017-18 in respect of price parameters, while the same was positive in respect of volume parameters.

**g. Ability to Raise Capital Investment**

90. The Authority notes that while the profits and return on capital employed of the domestic industry declined during the period of investigation, it has been able to earn a reasonable return. Thus, it cannot be considered that the imports have impacted the ability of the domestic industry to raise capital investment.

**h. Magnitude of Dumping**

91. It is noted that the subject goods are being dumped into India and the dumping margin is positive and significant for China PR, while for Korea, it is considered significant for non-cooperating producers and exporters.

**I. MAGNITUDE OF INJURY MARGIN**

92. The Authority has determined the non-injurious price for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The non-injurious price of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The Non-injurious price has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.

93. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below. It is noted that injury margin is negative for both the cooperating producers and exporters from Korea and China PR, while the same is positive for other producers and exporters from both the subject countries.

Injury Margin Table

Country	Producers	NIP (USD/MT)	Landed value (USD/MT)	Injury Margin (USD/MT)	Injury Margin %	Injury Margin % Range
Korea RP	Hanwha Solutions Corporation	***	***	***	***	(10-20)
Korea RP	Others	***	***	***	***	10-20

China PR	Tianjin Dagu Chemical Co Ltd	***	***	***	***	(20-30)
China PR	Others	***	***	***	***	50-60

## **J. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS**

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

### **a. Volume and Prices of Imports from Third Countries**

95. It is to be seen that there are significant imports from other countries such as Japan, Iran, Oman and Qatar. However, such imports have not caused any injury to the domestic industry during the present injury period.

### **b. Contraction in Demand**

96. It is to be seen that the demand for the subject goods has increased over the injury period. Therefore, contraction in demand cannot be considered as a reason for the likely injury to the domestic industry.

### **c. Developments in Technology**

97. It is noted that the technology for producing subject goods has not undergone any change and therefore, is not likely to cause injury to the domestic industry.

### **d. Conditions of Competition and Trade Restrictive Practices**

98. The investigation has not shown that conditions of competition or trade restrictive practices may result in injury to the domestic industry.

### **e. Export Performance of the Domestic Industry**

99. The injury information examined hereinabove relates only to the performance of the domestic industry in terms of its domestic market. Thus, the likely injury to the domestic industry cannot be attributed to its export performance.

### **f. Productivity**

100. The productivity of the domestic industry has improved over the period, and thus, the likely deterioration in performance of domestic industry cannot be attributed to a decline in productivity.

#### **J.1. Conclusion on continuation of injury and causal link**

101. Examination of the imports from the subject country and performance of domestic industry shows that despite anti-dumping duties in force, the imports from the subject country have remained significant, and have increased in absolute terms, and also increased in relation to production and consumption in India. The sales and market share of the domestic industry have declined during the period of investigation as compared to previous year, despite an increase in production and demand. The imports were not undercutting the prices of the domestic industry during the POI. While the profits, cash profits and return on investment of the domestic industry improved till 2018-19, these declined in the POI, as compared to preceding year, 2017-18 and base year. Overall, there is no significant adverse impact on the domestic industry during the injury period. Thus, there is no injury to the domestic industry during the injury period.

#### **K. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY**

102. The Authority observes that this is a sunset review investigation, the focus of this investigation is to examine the likely scenario of continued dumping and consequent injury if anti-dumping duties is to be allowed to expire even if there is no current injury. This also requires a consideration of whether the duty imposed is serving the intended purpose of eliminating injurious dumping.
103. All factors brought to the notice of the Authority have been examined to determine as to whether there is a likelihood of continuation or recurrence of dumping or injury in the event of cessation of the duty. The Authority has considered various information, as made available by the domestic industry, in order to evaluate the likelihood of continuation or recurrence of dumping or injury.
104. There are no specific methodologies available to conduct such a likelihood analysis. However, Clause (vii) of Annexure II of the Rules provides, *inter alia* for factors which are required to be taken into consideration viz.:
  - i. A significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
  - ii. Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;
  - iii. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
  - iv. Inventories of the article being investigated.

105. Further, the Authority has also examined other relevant factors having a bearing on the likelihood of continuation or recurrence of dumping and consequent injury to the domestic industry. The examination of the parameters of likelihood is as follows.

106. Insofar as the arguments of the cooperative foreign producers regarding their own capacities and exports are concerned, it is noted that the likelihood analysis must be conducted for the subject countries, and not for individual producers in those countries. Therefore, in addition to the information given by the responding exporter, the Authority has also considered information for exporting country cumulatively for all producers/exporters.

**a. Continued dumping of the subject goods**

107. The Authority notes that the dumping of the subject goods has continued from China PR, in spite of the duties in force. For the cooperative producer from China PR, the dumping margin is positive while the injury margin is negative. For non-cooperating producers from China PR, the dumping and injury margins are positive. Thus, in the absence of duties, the dumping of the subject goods is likely to continue, and they are likely to injure the domestic industry in India. However, insofar as Korea RP is concerned, the only producer whose goods were exported to India during the period of investigation were found at un dumped prices while the dumping and injury margins for non-cooperating producers/exporters from Korea is positive. However, the Authority notes that there are other Korean producers who have not cooperated in the present investigation. Further, it is also seen that there has been positive dumping and injury margins for the non-cooperative producers from Korea. Although there is no continuation of injury during the POI, continued dumping at an injurious price from Korea creates a significant likelihood for an intensification of dumped imports from non-cooperating producers from Korea RP if duties are discontinued.

**b. Volume of imports and increase in imports in presence of anti-dumping duties**

108. The Authority notes that there were significant imports from subject countries in absolute terms in present period. It is also noted that though the overall volume of imports have come down during the POI from the base year, the volume of imports from subject countries have increased significantly from the preceding year. Thus, the fact that the imports have increased despite duties in force indicates that the imports are likely to increase further in the event of cessation of duties. Further, the Authority notes that the imports have increased at a faster pace than the increase in demand for the subject goods, thereby indicating that the imports are likely to adversely impact the market share of the domestic industry in the market, in the absence of duties.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annl.
Subject imports	MT	55,210	61,030	1,542	86,056	1,14,741
Increase from base year	%	-	11	(97)	108	108
China PR	MT	40,326	42,357	1,542	43,957	58,609
Increase from	%	-	5	(96)	45	45

base year						
Korea RP	MT	14,884	18,673	-	42,099	56,132
Increase from base year	%	-	25	(100)	277	277
Demand	MT	3,302,971	3,452,738	3,529,422	27,24,370	36,32,494
Increase from base year	%	-	5	7	10	10

109. Regarding the contention that the imports are not likely to increase further, due to BIS licensing and public procurement requirements, it is noted that the data on record shows that the imports have increased, despite BIS licensing and public procurement requirements. Thus, it cannot be concluded that the imports are not likely to increase, in the event of cessation of duties.

**c. Freely disposable capacities present with subject countries**

110. The Authority notes that the domestic industry has adduced evidence of surplus capacities for China PR as well as North East Asia. However, no separate information for Korea RP has been provided. The Authority has examined the information with regard to surplus capacities for China PR as below.

Particulars	Unit	China PR
Total capacities	Lakh MT	450
Domestic demand	Lakh MT	350
Exportable capacity	Lakh MT	100
Capacity utilization	%	79%
Unutilized capacity	Lakh MT	94.5

111. The Authority notes that there are significant idle capacities in China PR, especially when compared to the demand of only 36.32 lakh MT in India. Further, even if the claim of the interested parties with regard to the optimum capacity utilization in the present product (90%) is accepted, it is seen that the Chinese producers nevertheless hold capacities significant enough to meet the entire Indian demand.

**d. Imminent significant expansion in production capacities**

112. The domestic industry has provided information regarding expansion of capacities, which shows that the capacities in China PR are likely to increase by 16.7 lakh MT per annum by 2023, implying an average capacity expansion of about 4 lakh MT per annum. In comparison, the demand in India increases only by about 1 to 1.5 lakh per annum. Further, the Chinese producers are already holding surplus capacities. This significant increase in capacities is likely to result in increased availability of the product and is likely to be exported to India at dumping prices, in the event of cessation of duty.

**e. Decline in exports from the subject countries**

113. The information provided by the domestic industry shows that the exports from the subject countries to rest of the world have declined over the recent period. While exports to India increased, the overall exports declined.

Particulars	2016-17	2017-18	2018-19	POI Actuals	POI Annualized
<b>Total Exports</b>					
China	1,848,968	1,389,656	998,656	951,104	1,268,138
Korea	483,751	392,401	427,670	261,319	348,425
<b>Subject Countries</b>	<b>2,332,720</b>	<b>1,782,057</b>	<b>1,426,326</b>	<b>1,212,422</b>	<b>1,616,563</b>
India					
China	77,096	42,346	178	40,504	54,005
Korea	14,841	26,304	-	42,100	56,133
<b>Subject Countries</b>	<b>91,936</b>	<b>68,650</b>	<b>178</b>	<b>82,604</b>	<b>110,139</b>
<b>Rest of world</b>					
China	1,771,873	1,347,310	998,478	910,599	1,214,132
Korea	468,911	366,097	427,670	219,219	292,292
<b>Subject Countries</b>	<b>2,240,783</b>	<b>1,713,407</b>	<b>1,426,148</b>	<b>1,129,818</b>	<b>1,506,424</b>

Source: Trade map data

#### f. Price attractiveness of the Indian market

114. The Authority notes that the exporters have been exporting significant volumes of subject goods to other countries at prices lower than the selling price in India, as summarized in the table below.

Country	Exports to third countries (MT)	Exports at prices lower than price to India (MT)	Share in third country exports (%)	In relation to merchant demand in India (%)
China PR	9,51,103	4,50,250	47%	17%
Korea RP	2,61,319	1,48,393	57%	5%
<b>Total</b>	<b>12,12,422</b>	<b>5,98,643</b>	<b>49%</b>	<b>22%</b>

115. In the event of cessation of duties, such exports are likely to be diverted to India due to the comparative price attractiveness of the country.

116. It is also noted that a significant volume of exports of subject goods from subject countries are being made at prices which are undercutting the domestic industry prices, and also are lower than NIP suggesting likelihood of recurrence of injury to the domestic industry.

117. Based on the data provided by the cooperating producers China PR, the Authority notes that exports to India are priced higher than exports to third countries. In view of the same,

Indian market for the cooperating producer found to be price attractive market. Further, besides the cooperating producer, no significant exports were made from China PR.

**g. Analysis of Post-POI Data**

118. The post-POI data submitted by the domestic industry shows that both the volume and the price of imports has declined significantly during the subsequent period. Further, the domestic industry has suffered a decline in production, sales, capacity utilization, profits, cash profits and return on capital employed. The domestic industry has incurred losses in this period.

**L. POST-DISCLOSURE COMMENTS**

**L.1. Submissions of the domestic industry**

119. The domestic industry largely reiterated the submissions made earlier. In particular, the domestic industry emphasized the following.

- There is continued dumping of the subject goods from the subject countries, and the imports have increased even with the duties in force.
- There are significant surplus capacities in subject countries, and exports to third countries are also likely to be diverted to the Indian market, owing to its price attractiveness.
- The price undercutting is negative only because of the imports being made in the East, whereas the domestic industry has sold the subject goods throughout the country. The prices in the East should be considered for determination of price undercutting, as the product entails significant freight cost.
- There is no need for determination of injury margin as the domestic industry has sought extension of duty. If the injury margin is determined, difference in inland freight cost should be adjusted.

**L.2. Submissions of other interested parties**

120. Other interested parties have also reiterated their submissions. In addition, the interested parties have submitted as under.

- In cases such as the present one, wherein different members of the AMAI have been selectively participating in a series of investigations over the years, Trade notice no.13/2018 serves as an important tool for the Authority to verify the claims made by the Petitioners and the same should be followed.
- The Authority has not appropriately considered the claims made by the interested parties relating to excessive confidentiality.
- The Authority has noted at paragraph 53 that \*\*\*% of the domestic sales found to be profitable. The same ought to be considered confidential and not disclosed to the public.

- d. At paragraph 63 (xxix) the Authority has erroneously recorded the argument of the cooperating exporters from Korea as stating that Australia accounts for significant volumes of exports for lye by the cooperating exporters. As was clarified in the rejoinder submissions, the analysis presented does not refer to the data of the cooperating exporters but to exports from Korea as a whole. The same should therefore be rectified in the final findings.
- e. **Impact of BIS:** The Authority has noted at paragraph 72 that even when compared to the beginning of the injury period, that is, pre-introduction of BIS, the imports have shown an increase during the period of investigation. While the overall imports of the PUC have increased since the base year, the market share of imports from the subject countries in demand has remained low throughout the injury period and POI. The share of imports from China and Korea in the POI is a mere 2.26 and 2.16 percent respectively as against 1.23 and .54 percent before the implementation of BIS certification in 2018. Compared to the base year as well, the market share in demand of both subject countries has gone up only marginally when compared to the market share in demand of the Domestic Industry as well as other countries.
- f. **Injury and Causal Link:** The cooperating exporters have reiterated that there is a lack of material injury and causal link in the present investigation. Any perceived injury suffered during the post-POI period is attributable to factors other than dumping – significant evidence in this regard has already been placed on record.
- g. **Continuation of NIL Duty for Cooperating Producers and Exporters:** The dumping margin and injury margin for the cooperating exporters from Korea were negative in the original finding as well as in all subsequent investigations, including the present review. Similarly, the cooperating exporters from China submit their dumping margin and injury margin were negative in previous investigation, and the injury margin continues to be negative in the present review as well. Therefore, the cooperating Exporters' NIL margin ought to be continued.

### **L.3. Examination by the Authority**

- 121. The submissions by the interested parties were mostly repetitive in nature, and have already been addressed at the relevant place in the finding. The Authority has examined the remaining submissions herein below.
- 122. As regards the determination of price undercutting is concerned, the Authority notes that the domestic industry has not demonstrated the need for region-wise undercutting. Merely because the imports have been made in East does not indicate the need for a region-wise undercutting, as East India does not operate as an isolated market. It has not been demonstrated that the imported goods were not available at same prices in other

markets.

123. As regards the determination of injury margin, it is noted that inclusion of freight of the domestic industry in non-injurious price will not be in line with the consistent practice followed in this regard and Annexure – III of the Anti-Dumping Rules. Accordingly, the inland transport cost incurred by DI has not been included in their NIP.
124. On the issue of the supporter's data not being filed the Authority notes that it had invited all interested parties to file their claims with appropriate evidences and formats as applicable. The supporters have chosen to provide limited support to the domestic industry members. Accordingly, the Authority has made its determination based on the information filed on record.
125. As regards the claim on confidentiality, the Authority reiterates that it has assessed the allegations presented by the interested parties on the domestic industry's violations of the trade notice requirements, and has found the domestic industry's claims on confidentiality to be in line with the trade notice and the confidentiality requirements under the Anti-dumping Rules.
126. With regard to the averments regarding BIS certification, the Authority notes that despite the existence of the BIS requirement, the import volumes have largely normalized to pre-BIS levels whereby the parameters of likelihood and evidence placed on record have been considered while determining whether or not duties should be continued in the present review.
127. With regard to the claim that there is no injury to the domestic industry, the Authority notes that the final determination has been made keeping in mind all the information placed on record concerning dumping injury as well as causal link. Given that the present investigation is a sunset review, the determination cannot solely be based on the absence of injury to the domestic industry, and the Authority has also take into consideration the likelihood of continuation or recurrence of injury in case duties are allowed to expire.
128. With regard to the request for continuation of NIL margins for individual cooperating exporters, the same are addressed in the duty table.

#### **M. CONCLUSION ON LIKELIHOOD OF DUMPING AND INJURY**

129. The evidence on record shows that there is likelihood of dumping of the subject goods and injury to the domestic industry. The volume of imports has increased in absolute terms, and in relation to production and consumption, even after excluding the period when BIS was introduced, and the foreign producers did not have licenses. The domestic industry has not suffered injury during the present injury period. However, the data on record shows that the exporters in the subject countries have significant surplus capacities. It is also noted that while their exports to third countries are declining, exports to India have increased at the same time. It is also noted that India is a price attractive market for the subject exporters as significant exports to third countries are at a price

below normal value of the exporters, and also below the selling price and non-injurious price of the domestic industry. Exports to India are likely to increase significantly in the event of cessation of antidumping duty and the same is likely to cause injury to the domestic industry in India. Thus, in the event of cessation of anti-dumping duty, dumping of the subject goods is likely to intensify, causing injury to the domestic industry.

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

130. The Authority notes that the purpose of anti-dumping duty, 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 country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.
131. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, 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 measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

#### **O. CONCLUSION**

132. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority, as recorded in the above findings, and on the basis of the above analysis of the likelihood of continuation or recurrence of dumping and injury to the domestic industry, the Authority concludes that
  - a. In the event of expiry of duty, the product under consideration is likely to be dumped in significant volumes.
  - b. The domestic industry is likely to suffer injury in case the anti-dumping duty in force is allowed to cease at this stage.
  - c. There is sufficient evidence to indicate that cessation of anti-dumping duty at this stage will lead to recurrence of dumping and injury to the domestic industry.

#### **P. RECOMMENDATIONS**

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

134. Having concluded that there is positive evidence of likelihood of dumping and injury if the existing anti-dumping duties are allowed to cease, the Authority is of the view that the anti-dumping duty in force on imports of the product under consideration from the subject countries is required to be continued further. Considering the facts and circumstances of the case, as established hereinabove, the Designated Authority considers it appropriate to recommend extension of the existing quantum of anti-dumping duties on imports of subject goods from China PR and Korea RP, except in respect of those producers who have not participated in the current sunset review investigation. Those non-cooperating producers and exporters in this sunset review investigation have been accorded residual duty as applicable at present. Accordingly, the anti-dumping duties for responding producers and non-cooperative producers from subject countries are recommended as per the duty table below. The Authority, thus, considers it necessary to recommend continuation of definitive anti-dumping duty as modified, on all imports of the subject goods from the subject countries as per column 7 in the duty table below, for a further period of five years.

#### **Duty Table**

S. No (1)	Sub-heading (2)	Description of goods (3)	Country of origin (4)	Country of export (5)	Producer (6)	Amount (7)	Unit of Measurement (8)	Currency (9)
1	281511 and 281512	Caustic soda, of all grades	Korea RP	Korea RP	Hanwha Solutions Corporation	Nil	Dry Metric Ton	USD
2	- do -	- do -	Korea RP	Any country, including Korea RP	Any producer, other than S. No. 1 above	21.90	Dry Metric Ton	USD
3	- do -	- do -	Any country other than subject countries	Korea RP	Any	21.90	Dry Metric Ton	USD
4	- do -	- do -	China PR	China PR	Tianjin Dagu Chemical Co., Limited	Nil	Dry Metric Ton	USD
5	- do -	- do -	China PR	Any country, including China PR	Any producer, other than S. No. 4 above	48.39	Dry Metric Ton	USD

6	- do -	- do -	Any country other than subject countries	China PR	Any	48.39	Dry Metric Ton	USD
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135. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 8B, 9 and 9A of the Customs Tariff Act, 1975, as amended from time to time.

136. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.



(B.B. Swain)

Special Secretary & Designated Authority