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**F. No. 6/3/2021-DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Trade Remedies)  
Jeevan Tara Building, Parliament Street, New Delhi -110001**

Dated 29.03.2022

**FINAL FINDINGS**

**NOTIFICATION**

**Subject: Anti-dumping investigation concerning imports of Fluoro Backsheet originating in or exported from China PR.**

**A. BACKGROUND OF THE CASE**

Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred as the “Rules”) thereof.

1. Whereas, Renewsys India Private Limited (hereinafter referred to as the “applicant” or the “domestic industry”) has filed an application before the Designated Authority (hereinafter referred to as the “Authority”) in accordance with the Act and the Rules for initiation of an Anti-Dumping investigation concerning imports of Fluoro Backsheet (hereinafter referred to as the “subject goods”) from China PR (hereinafter referred to as the “subject country”) and has requested for imposition of anti-dumping duty.
2. And whereas, the Authority, on the basis of prima-facie evidence submitted by the applicant, issued a public notice vide Notification No. 6/3/2021-DGTR dated 30<sup>th</sup> March 2021, published in the Gazette of India, Extraordinary, initiating the anti-dumping investigation in accordance with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the said subject country, and to recommend the amount of anti-dumping duty, which, if levied would be adequate to remove the alleged injury to the domestic industry.

**B. PROCEDURE**

3. The procedure described hereinbelow has been followed with regard to the investigation:

- a. The Authority notified the Embassy of the subject country in India about the receipt of the present application before proceeding to initiate the investigation in accordance with Rule 5(5) of the Anti-Dumping Rules.
- b. The Authority issued a public notice dated 30<sup>th</sup> March 2021, published in the Gazette of India, Extraordinary, initiating an investigation concerning the imports of the subject goods from the subject country.
- c. The Authority sent a copy of the initiation notification to the Embassy of the subject country in India, known producers and exporters from the subject country, known importers / users and the domestic industry as well as other domestic producers as per the information made available to it by the applicant, and requested them to make their views known in writing within the prescribed time limit.
- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of the subject country in India, in accordance with Rule 6(3) of the Rules. A copy of the non-confidential version of the application was circulated to the other interested parties.
- e. The Embassy of the subject country in India was also requested to advise the producers / exporters in their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers / exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.
- f. The Authority forwarded a copy of the public notice initiating the anti-dumping investigation to the following known producers/exporters in the subject country and offered an opportunity to make their submissions known in accordance with Rule 6(2) of the Rules:
  - i. Cybrid Technologies Inc.;
  - ii. Jolywood (Suzhou) Sunwatt Co. Ltd.;
  - iii. Coveme Engineered Films Zhangjiang Co. Ltd.;
  - iv. Crown Advanced Material Co. Ltd.;
  - v. Jiangsu Shuangxing Color Plastic New Materials Co. Ltd.;
  - vi. Anhui Evergreen New Material Technology Co. Ltd.;
  - vii. Hongzhou First Applied Material Co. Ltd.;
  - viii. Grand New Material Co. Ltd.;
  - ix. DSM China Ltd. (Suzhou Sunshine New Materials Technology)
  - x. Changzhou Huitian New Material Co.
  - xi. M/s Shanghai Huitian New Material Co., Ltd.

g. In response to the initiation notification of the subject investigation, following producers from the subject country have responded by filing questionnaire response:

- i. M/s Changzhou Huitian New Material Co., Ltd.
- ii. M/s Cybrid Technologies Inc.
- iii. M/s Jolywood (Suzhou) Sunwatt Co. Ltd.

h. The Authority sent Questionnaires to the following known importers / users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.

- i. Navitas Green Solutions Pvt. Ltd.
- ii. Bharat Heavy Electricals Ltd.
- iii. Microsun Solar Tech Pvt. Ltd.
- iv. Premier Solar Systems (P) Ltd.
- v. Akshaya Solar Power (India) Pvt. Ltd.
- vi. Access Solar Limited
- vii. Emmvee Photovoltaic Power Private Limited
- viii. Lanco Solar Private Limited
- ix. Andromeda Energy Technologies Pvt. Ltd.
- x. Innovate Solar Solutions
- xi. Sova Power Ltd.
- xii. Gautam Solar Private Limited
- xiii. Alpex Exports Pvt. Ltd.
- xiv. Goldi Green Technologies Pvt. Ltd.-Surat
- xv. HBL Power Systems Ltd.
- xvi. Greentek India Pvt. Ltd.
- xvii. Abhishek Solar Industries Pvt. Ltd.
- xviii. Vikram Solar Pvt. Ltd.
- xix. Aditi Solar Private Limited
- xx. Tata Power Solar Systems
- xxi. Rajasthan Electronics & Instruments Ltd.
- xxii. Central Electronics Limited
- xxiii. Sirius Solar Energy System Pvt. Ltd.
- xxiv. Integrated Batteries India Pvt. Ltd.
- xxv. Sahaj Solar Pvt. Ltd.
- xxvi. Bharat Heavy Electricals Limited EPD
- xxvii. Icon Solar-EN Power Technologies Pvt. Ltd.
- xxviii. Plaza Power & Infrastructure Co.
- xxix. Soltek Photovoltek Pvt. Ltd.
- xxx. Natco Pharma Limited
- xxxi. Himalayan Solar Pvt. Ltd.
- xxxii. Jakson Engineers Limited

- xxxiii. Lubi Electronics
- xxxiv. Sova Solar Ltd (Unit-II)
- xxxv. Sri Savitr Solar Pvt. Ltd.
- xxxvi. Saatvik Green Energy Private Limited
- xxxvii. HVR Solar Pvt. Ltd.
- xxxviii. Sanelite Solar Pvt. Ltd.
- xxxix. Isolation Energy Pvt. Ltd.
- xl. Alpex Exports Pvt. Ltd.
- xli. Brawn Energy Pvt. Ltd.
- xlii. Mehar Solar Technology Pvt. Ltd.
- xliii. Greenbrilliance Renewable Energy LLP
- xliv. HR Solar Solutions Private Limited
- xlv. Swelect Energy Systems Limited
- xlvi. Enfros Technologies Pvt. Ltd.
- xlvii. Orb Energy Private Limited
- xlviii. Sunsua Industries Pvt. Ltd.
- xliv. Mahathi Engineering Industries Pvt. Ltd.
- l. Photon Energy Systems Limited
- li. Novus Green Energy
- lii. Raajratna Ventures (Solar)
- liii. Spark Solar
- liv. Waaree Energies Ltd.
- lv. HHV Solar
- lvi. Patanjali Solar
- lvii. ITI Ltd.
- lviii. Sun N Sand
- lix. HR Solar
- lx. Websol Solar
- lxi. Agarwal Solar Pvt. Ltd.
- lxii. Jyotitech Solar
- lxiii. PV Powertech
- lxiv. Lubi Electronics
- lxv. Novasys Green
- lxvi. Rayzon Solar
- lxvii. Redren Solar
- lxviii. Pahal Solar
- lxix. Citizen Solar
- lxx. Kosol Solar
- lxxi. Radical Solar
- lxxii. Neety Euro-Asia Solar Energy
- lxxiii. Sunfuel Technologies LLP
- lxxiv. Swelect Energy Systems Limited
- lxxv. Sirius Solar Energy Systems Pvt. Ltd.
- lxxvi. Jain Irrigation Systems Limited

- i. The Authority also sent initiation notification to the following Associations asking them to intimate all their members regarding the initiation of investigation and submit response or comments, if any.
  - i. North India Module Manufacturers Association (NIMMA)
  - ii. Indian Solar Module Manufacturers Association (ISMMA)
  - iii. Karnataka Renewable Energy Manufacturers Association
  
- j. The following importers and users have submitted responses to the questionnaires issued to them by the Authority:
  - i. Emmvee Photovoltaic Power Pvt. Ltd.
  - ii. Waaree Energies Limited
  - iii. Navitas Green Solutions Pvt. Ltd.
  - iv. Insolation Energy Pvt. Ltd.
  - v. Goldi Solar Pvt. Ltd.
  
- k. Further, the following interested parties have submitted comments on the Petition filed by the domestic industry:
  - i. China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME)
  - ii. Lucky Films Co. Ltd.
  - iii. Jollywood (Suzhou) Sunwatt Co., Ltd.
  - iv. All India Solar Manufacturers Association (AISMA)
  - v. North India Module Manufacturers Association (NIMMA)
  - vi. Cybrid Technologies Inc.
  - vii. Suzhou Yisheng Optical Material Co., Ltd.
  
- l. The period of investigation (POI) for the purpose of present investigation is 1<sup>st</sup> October 2019 to 30<sup>th</sup> September 2020 (12 months). The injury analysis period covers April 2017 to March 2018, April 2018 to March 2019, April 2019 to March 2020 and the period of investigation.
  
- m. Transaction-wise imports data for the period of investigation and the preceding three years was procured from the DGCI&S. The Authority has relied upon the data of DGCI&S for calculating the volume and value of imports of the subject goods in India.
  
- n. Further information was sought from the applicant to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of present investigation.

- o. The Authority made available the non-confidential version of the submissions made by the various interested parties. A list of all the interested parties was uploaded on the DGTR website along with the request therein to all of them to email the non-confidential version of their submissions to all the other interested parties since the public file was not accessible physically due to the ongoing global pandemic.
- p. The domestic industry has submitted financial data duly certified by their Chartered/Cost Accountant. The non-injurious price (NIP) has been determined based on the optimum cost of production and cost to make & sell the subject goods in India as per the information furnished by the domestic industry and in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules. Such non-injurious price has been considered to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- q. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 14<sup>th</sup> December 2021 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.
- r. The submissions made by the interested parties, arguments raised and information provided by the 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 these final findings.
- s. The Authority, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of these final findings, to the extent possible and verified the data / documents submitted by the domestic industry to the extent considered relevant and possible.
- t. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on a confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- u. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties

as non-cooperative and recorded these final findings on the basis of the facts available.

- v. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 16<sup>th</sup> March, 2022 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these final findings.
- w. The exchange rate adopted by the Authority for the subject investigation is 1 US\$ = Rs. 74.41.

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

- 4. At the stage of initiation, the product under consideration was defined as follows:

*“The product under consideration in the present investigation is “Fluoro Backsheet”. Backsheet is a polymer-based component used in the manufacturing of solar PV modules. It is manufactured using lamination process where one or more sheets are laminated / coated using solvent or extrusion lamination and / or liquid coating technology. Currently, there are mainly two types of backsheet in the market, Fluoro and non-fluoro.”*

#### **C.1. Submissions of the other interested parties**

- 5. The other interested parties have submitted as follows with regard to the scope of the product under consideration and like article:
  - a. Fluoro Backsheet can be classified into three different product types based on the manufacturing process, physical characteristics, usability, and consumer preference. The three types are: (a) fully laminated; (b) fully coated; (c) partially coated.
  - b. The domestic industry produces only fully laminated Fluoro Backsheet and not fully coated and partially coated Fluoro Backsheet.
  - c. Fully and partially coated Fluoro Backsheet are more suitable for tropical monsoon climate, with high temperatures. They are durable and highly resistant to UV rays and provide thermo stability to the module. They are also not susceptible to cracking.

- d. Raw materials such as polyvinylidene fluoride used in production of the subject goods are imported from China PR.
- e. The product brochures of the domestic industry as submitted in the petition does not include fully/partially coated Fluoro Backsheet.
- f. The user associations have also indicated that the domestic industry does not produce coated Backsheet.
- g. The domestic industry does not have the requisite technology used for the production of fully/partially coated Fluoro Backsheet.
- h. It was submitted that it is essential to consider PCN wise data for apple-to-apple comparison.
- i. The importers import certain types of Backsheet i.e., KPC, KPF, TPC, CPC, which are not produced by the domestic industry. The domestic industry produces KPE and PPE type of Backsheet.
- j. There is a difference in production process and raw materials for different PCN classifications, which affects the cost of the Backsheet.
- k. The end product, i.e., solar module is certified by international agencies with respect to the type of Backsheet used.

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

- 6. The domestic industry has submitted as follows with regard to scope of the product under consideration and like article.
  - a. Contrary to the claims of the interested parties, the domestic industry produces all types of the PUC as required by the Indian module manufacturers.
  - b. Most imports take place under HS codes 3920 and 3921, however, it is possible that imports may be taking place under other HS codes. In any case, the HS code is only indicative and not binding upon the Authority.
  - c. As regards the PCN classification, it was submitted that the exporters had not requested for such a classification in their response to the questionnaire issued by the Authority.
  - d. PCN request at a belated stage cannot be accepted. As per the manual of operating procedures, PCN request must be made within 60 days from the date of initiation.

- e. The PCN request was initially made by one exporter after 85 days of initiation.
- f. The Authority had earlier denied the request of the exporter for PCN classification because it was filed after the deadline. The exporter has not made any requests regarding PCN classification since then.
- g. Till the filing of the written submission, only one exporter, i.e. Jolywood, had made a request for PCN; however, subsequently one more exporter and the user associations have also requested for PCN in their written submissions.
- h. The cost of production of coated Backsheet is only marginally higher than laminated Backsheet.
- i. The domestic industry has produced sample quantities of coated Backsheet. Therefore, the claim that the domestic industry does not have the capability of producing coated Backsheet is false.
- j. The difference in raw material or production process is irrelevant in PCN. It must be shown that there is a difference in function, usage, cost or price.
- k. No evidence has been provided by the user associations that the domestic industry has failed to supply the subject goods after a demand for the same was made by the users.
- l. The domestic industry has produced like article to the imported goods.

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

- 7. The product under consideration as defined in the notice of initiation is “Fluoro Backsheet”. Backsheet is a polymer-based component used in the manufacturing of solar PV modules. It is manufactured using lamination/coating process where one or more sheets are laminated / coated using solvent or extrusion lamination and / or liquid coating technology. Currently, there are mainly two types of Backsheet in the market, Fluoro and Non-Fluoro.
- 8. Fluoro Backsheet could be fully laminated or partially/fully coated. Fluoro Backsheet is made by laminating/coating a Fluoro layer on the air and/or cell side of the Backsheet during the manufacturing process. Few distinct properties of Fluoro Backsheet over Non-Fluoro Backsheet are as follows:
  - a. Higher protection to the module form UV
  - b. Higher resistance to hydrolytic degradation
  - c. Low dirt and dust affinity leading it to keep modules clean from the back side.

9. Fluro Backsheet is available in different sizes and colours. Backsheet is used in Solar PV modules to protect cells and other module components from dirt, dust, moisture and UV radiations during the service life time of the module. The cell, connected with string, is placed between two EVA sheets followed by a layer of the Backsheet. Glass is placed on other side of the sandwich while making the module.
10. The applicant has stated that the subject products are predominantly imported under Chapter Heading 39 “Plastics and articles thereof”. They have further stated that the subject goods are imported under different codes which varies from company to company and country to country (however, a majority of imports are under the headings 3920 and 3921). The Authority notes that the customs classification is indicative only and in no way binding on the scope of the present investigation.
11. With respect to the submissions of the other interested parties regarding PCN classification, the Authority notes that except Jolywood no interested made a request for PCN till the time of oral hearing. Even Jolywood made this request on 24.06.2021 i.e., 85 days after the initiation of the investigation without any evidence in support of the request. Therefore, the PCN request was not considered. During the stage of oral hearing, the request for PCN was once again made by Jolywood, along with Cybrid, even though both these exporters had not indicated the need for PCN in the non-confidential version of their exporter questionnaire response. The user industry also made a request for PCN, for the very first time, in their written submissions pursuant to the oral hearing.
12. In view of aforementioned requests for PCN, a special meeting of all registered interested parties was convened through Video Conference on 17<sup>th</sup> December 2021 to examine in detail the requirement or otherwise of PCN in the present investigation.
13. During the above meeting, the domestic industry vehemently opposed the request for PCN made by the interested parties. They stated that the request for PCN was made at extremely belated stage. They also stated that the said requests were filed without providing any evidence substantiating the need for having PCN methodology.
14. The Authority examined the submissions made by the interested parties and noted that the interested parties merely indicated that there are differences in some of the raw material and manufacturing process involved in production of the different grades of the requested PCN. However, none of the interested parties submitted any evidence to demonstrate how this would have a bearing on the function, usage, cost, pricing, etc of the PUC. The Authority also noted that the requests for PCN were made very belatedly, at the closing stages of the investigation. None of the interested parties furnished any reason for the delay, nor did they request for condonation of delay.
15. Accordingly, the Authority decided to reject the request for PCN made by the interested parties.

16. As regards the claims of the interested parties that the products not produced by the domestic industry must be excluded from the scope of the product under consideration, the Authority notes that the domestic industry has demonstrated that it produces all types of the Backsheet including (a) fully laminated; (b) fully coated; and (c) partially coated. Domestic industry has also provided sales invoices demonstrating the sales of coated backsheet to certain Indian consumers. The Authority has also verified the evidence provided by the domestic industry and is satisfied with the submission of the domestic industry that it produces all three types of Fluoro Backsheet. In view thereof, the Authority holds to reject the exclusion requests made by the interested parties.
17. The Authority further notes that the domestic industry has not manufactured transparent backsheet. The said product was also not considered for the computation of the landed value of the imports at the time of filing of the application. Transparent backsheet is a specialty product having substantially different commercial and technical specifications as against non-transparent backsheet. Thus, the Authority decides to exclude transparent backsheet from the scope of the PUC.
18. In view of the above, the scope of product under consideration is determined as:

*“The product under consideration in the present investigation is “Fluoro Backsheet excluding transparent backsheet”.*

#### **D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING**

##### **D.1. Views of the other interested parties**

19. The other interested parties have submitted as follows with regard to the scope of the domestic industry and standing.
  - a. The production of the domestic industry should be divided into merchant and captive markets.
  - b. The domestic industry has stated that it does not sell all its production of the subject goods in the merchant market.
  - c. The product under consideration is a raw material used in the manufacture of solar panels. The domestic industry consumes the product under consideration as raw material for the production of the downstream product, i.e., solar PV module.
  - d. The captive consumption of the product under consideration by the domestic industry has increased substantially throughout the injury analysis period, and during the POI, it is 6.5 times the amount as compared to the base year.

- e. Standing of the domestic industry should be assessed based on its sales in the merchant market alone. In this regard, reliance was placed on *Pig Iron Manufacturers Association v. DA, (2000) 116 E.L.T. 67 (Tribunal)* and *Kalyani Steel Limited and Ors. v. Union of India/Designated Authority (2017 (357) E.L.T 1204 (Tribunal – Delhi))*.

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

20. The domestic industry has submitted as follows with regards to the scope of the domestic industry and standing.
  - a. The application is filed by RenewSys Pvt. Ltd., which is the largest producer of the subject goods in India accounting for \*\*\*% of the total domestic production.
  - b. There are other producers of the product under consideration, however, none of the producers have opposed the application filed by the domestic industry.
  - c. One producer, namely Vishakha Solar Films, which constitutes 16% of the total domestic output, has supported the application filed by the domestic industry.
  - d. The evidence available on record indicates that the applicant satisfies the requirements of standing as per Rule 2(b) and Rule 5 of the Rules.
  - e. With regard to the exclusion of captive sales, it is submitted that the exclusion of captive sales was done in previous investigations when the entire sales of the domestic industry was captive, and the domestic production was not in competition with the imported subject goods.
  - f. There is no reason for a separate analysis of the goods captively consumed by the domestic industry. The decision in Pig Iron case was with respect to the producers who were only captively consuming the subject goods and not involved in merchant sales. The captive consumption of the subject goods has in fact lowered the costs for the domestic industry; however, despite this, the domestic industry continues to suffer injury.

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

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

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

22. The application was filed by RenewSys India Pvt. Ltd. There are some other producers of the PUC in India. The applicant's total production amounts to \*\*\*\*% of the total domestic output in India. The applicant is not related to any importer or exporter of the subject goods in the subject country, and has only imported miniscule quantity \*\*\*\*% of the demand and \*\*\*\*% of the total imports of the subject goods from the subject country for testing and R&D purposes.
23. One other domestic producer of the subject goods (i.e., Vishakha Solar Films) which constitutes \*\*\*\*% of the total domestic output, has supported the application filed by the domestic industry through their letter dated 20.12.2021. The Authority notes that the applicant, along with its supporter account for about \*\*\*\*% of the total domestic production in India. Furthermore, none of the Indian producers have opposed the application filed by the domestic industry. The Authority, therefore, concludes that the applicant constitutes the domestic industry within the meaning of Rule 2 (b) and Rule 5 of the Anti-dumping Rules.
24. With regard to the claims of the other interested parties that the captive sales of the domestic industry must be excluded while examining the standing, the Authority notes that the merchant sales of the domestic industry by itself constitutes more than 50% of the total domestic output. Therefore, the domestic industry satisfies the criteria of standing under Rule 5 of the Rules.

## **E. CONFIDENTIALITY**

### **E.1. Submissions of the other interested parties**

25. The other interested parties have submitted as follows with regards to confidentiality.
  - a. The Petition filed by the domestic industry is deficient, and does not disclose the essential information which is necessary for the interested parties to put forth their defense.
  - b. The Non-confidential version of the petition is not a replica of the confidential version. The exporters are therefore not able to defend their interests effectively.
  - c. The Petitioner has disregarded the requirements of Trade Notice 10/2018 dated 07.09.2018, and has claimed excess confidentiality.
  - d. The petition does not provide adequate information regarding: (i) manufacturing process; (ii) names of raw materials used in production of the product under consideration; (iii) volume and value of production by all producers except the

domestic industry; (iv) average industry norms for capacity utilization; (v) average industry norms for inventory; (vi) funds raised: loans and advances; (vii) export price/unit; (viii) average industry norms for PBIT; (ix) purchase of PUC; (x) non injurious price.

- e. The domestic industry has not provided any reason for not disclosing information as per Trade Notice 10/2018.
- f. The petitioner has claimed complete confidentiality over Formats A, B, C, D, E, I, J, K & L by simply claiming that these independent Formats contain business sensitive information. However, it is obligatory for the petitioner to provide non-confidential summaries of the above information.
- g. The petitioner has unjustifiably claimed confidentiality over the Annual Reports of the company despite the fact that the Annual Reports are in public domain.
- h. With regards to claims by the domestic industry that the exporters have claimed excess confidentiality, it was submitted that all information relating to costing and pricing have been kept confidential, and the non-confidential version of the same has been provided indicating trends of the data.
- i. The information regarding the shareholdings of the exporters have been kept confidential since this is business sensitive information.

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

- 26. The domestic industry has submitted as follows with regards to confidentiality:
  - a. The domestic industry has not claimed excess confidentiality.
  - b. Confidentiality claimed by the domestic industry is only for costing information which includes costs and prices.
  - c. The domestic industry has provided indexed figures for all information over which it has claimed confidentiality.
  - d. The non-confidential versions of the questionnaire response filed by the exporters is not a replica of the confidential version.
  - e. The exporters have also claimed excess confidentiality and have not provided proper indexing of data.

- f. The exporters did not indicate any request for PCN in the non-confidential version of their questionnaire responses. Any such request made in their confidential questionnaire responses is, thus, meaningless and cannot be accepted.
- g. The exporters have kept basic information like structure of enterprise, shareholding pattern, nature of the relationship between the exporter and those affiliated enterprises etc. confidential. There is no justification for the same.

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

- 27. The Authority made available non-confidential version of the information provided by various parties to all interested parties as per Rule 6(7).
- 28. With regard to confidentiality of information, Rule 7 of Anti-Dumping Rules provides as follows:

***“7. 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 summarisation 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 authorize its disclosure in a generalized or summary form, it may disregard such information.”*

- 29. The interested parties, in their various submissions, have raised the issues of confidentiality claims of the other parties. 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 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 versions of the evidence submitted by the various interested parties in the form of public file.

30. A list of all the interested parties was uploaded on DGTR's website along with the request to all parties therein to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to Covid pandemic.

**F. MISCELLANEOUS ISSUES**

**F.1. Submissions of the other interested parties**

31. The other interested parties have made the following miscellaneous submissions.
  - a. The period of investigation, which was fixed as a 12-month period is not representative since out of these 12 months, the last 6-month period was affected by either a full or a partial lockdown due to COVID-19 pandemic.
  - b. The performance of the domestic industry was impacted the most from April 2020 to June 2020 due to the pandemic and the consequent lockdown imposed.
  - c. The Authority should take note of these special factors and consider a POI for 18-month period instead of 12-month period.
  - d. There have been several recent investigations wherein the Authority has fixed POI for 18 months in the light of the pandemic situation.
  - e. The decline in performance of the domestic industry is directly attributable to the pandemic.
  - f. The subject product is an important raw material used in the manufacture of solar PV modules. The imposition of AD duty would significantly impact the downstream user industry.
  - g. Imports of the subject goods into the SEZ should not be treated as sales to India, and hence should be excluded from the scope of imports while calculating dumping and injury margins.
  - h. The imposition of duty would have significant impact on the manufacturers of the module since backsheets amount to 5% of the cost of the module.
  - i. It was submitted that no related party of the exporter (Cybrid Technologies Ltd.) engages in the production of the subject goods.

- j. As regards the contention that Cybrid Technologies Ltd. has a related importer in India, it was submitted that 98% of all exports of Cybrid was made directly, and 2% of total exports were made through unrelated traders.
- k. Jolywood Sunwatt Co. Ltd. has submitted that it has no related importer in India.

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

32. The domestic industry has made the following miscellaneous submissions.

- a. The claim that the downstream user industry would be affected is without any basis.
- b. The likely impact of the duty would be minimal for the module manufacturers and almost nil for the end users.
- c. The impact of imposing 20% duty would be less than 0.80% on the end users.
- d. The exporters have not submitted any provision of law under which the SEZ market is not accessible to the DTA producers, legally or otherwise, which could necessitate exclusion.
- e. The domestic industry competes with the dumped imports produced in SEZs as well, therefore the question of segregation of markets does not arise.
- f. As per the Amendment to Section 9A(2A) of the Customs Tariff Act, 1975, payment of anti-dumping duty would be mandatory while making DTA clearance from SEZs.
- g. Cybrid Technologies Ltd. has stated that none of their owners, subsidiaries, or related parties engage in the production of the product under consideration; however, in their annual statement, it has been indicated that their subsidiary company Jiangsu Haohua PV Technologies Co. Ltd. (in which Cybrid has 85% stake) produces the PUC.
- h. Jolywood has provided information regarding its main corporate office in their questionnaire response, however, it has suppressed information regarding its Indian Sales Office, which has been indicated in its annual report.
- i. In the unlikely event the Authority is not inclined to reject the EQR of the said exporter, the landed value and export price of the exporter should be adjusted by applying facts available in terms of Rule 6(8) and making appropriate adjustments in their landed value and export price.

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

33. With regard to the submission that 1<sup>st</sup> October 2019 to 30<sup>th</sup> September 2020 (12 months), is not representative due to the effects of Covid-19. The Authority notes that as a general practice, the period of investigation is taken as 12 months, and only in exceptional circumstances, a longer or a shorter duration is adopted. The Authority finds that a 12-month period of investigation is appropriate for the present investigation. The Authority has excluded the lockdown period of April 2020 to June 2020 in its injury examination so that the injury, if any, caused to the domestic industry due to lockdown in India is not attributed to the dumped imports from the subject country.
34. With regards to the submission that the imposition of anti-dumping duty would have adverse effect on the downstream user industry, the Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Furthermore, no party has provided verifiable data regarding the impact of the duty on the end users of the product.
35. It has been claimed that the exporter, M/s Jolywood, is related to AMC Inc., its Indian importer of the subject goods and hence the export price should be constructed based on the sale to an independent buyer. In this regard, the Authority notes that the said exporter has provided its annual report of 2020 and the partnership agreement of AMC Inc. (the alleged related importer), and based on these documents it is noted that the said importer is not related to the exporter (M/s Jolywood) and hence there is no requirement of construction of export price.
36. With regard to the contention of the domestic industry that the questionnaire response filed by Cybrid Technologies Inc., should be rejected by the Authority because the company has made incorrect declaration with respect to the operations of one of its related company, Jiangsu Haohua PV Technology Co. Ltd., by not disclosing the fact that this related company is also engaged in the production and sales of the product under consideration, the Authority notes that there is merit in the submission of the domestic industry that the information contained in the Annual Report, the same being a statutory document, should be given due weightage and importance. The Authority is of the view that Cybrid Technologies Inc., has attempted to mislead the Authority by providing incorrect information regarding the nature of operations of its related party. In view thereof, the Authority has decided to reject the questionnaire response filed by the Cybrid Technologies Inc., and not to determine an individual dumping margin for the said producer/exporter.
37. As regards the claim that imports into the SEZ should not be included in the present investigation, it is noted that there is no legal basis to exclude imports into the SEZ for the purpose of determination of dumping and injury margin.

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

38. Under Section 9A(1)(c) of the Act, normal value in relation to an article means:

*“(c) “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 transhipped 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.”*

**G.1. Submissions of the other interested parties**

39. The other interested parties have submitted as follows with regards to normal value, export price and dumping margin.

- a. Designation of China PR as a Non-Market Economy (NME) is not in accordance with applicable laws and procedures.
- b. The relevant provision in Section 15 of China’s accession protocol which allowed for treatment of China PR as an NME has expired on 11<sup>th</sup> December, 2016. Therefore, there is currently no provision prevailing which allows the Authority to treat China PR as an NME in any investigation.

- c. Even if the Authority determines that China PR is a non-market economy for the purpose of this investigation, the Authority cannot directly resort to calculating the normal value based on the third methodology in Paragraph 7 of Annexure I to the Rules (i.e., *on any other reasonable basis*).
- d. The Authority must first attempt to determine the normal value based on; (i) price or constructed value in a market economy third country, or (ii) the price from such a third country to other countries, including India. Only if it is not possible to determine normal value based on these two methods, it can be determined on any other reasonable basis.
- e. Decision of the Hon'ble Supreme Court of India in the case of Shenyang Matsushita, 2005 (181) ELT 320 (SC) also supports the view that the Authority must proceed to determine normal value on any other reasonable basis only if it has exhausted the first two methods.
- f. There is no reason provided in the petition as to why the Authority cannot calculate the normal value based on the first two methods.
- g. The information provided by the domestic industry regarding the calculation of normal value has been kept entirely confidential, and it is therefore not possible for the respondents to answer any of the claims in that regard.
- h. The dumping margin provided by the domestic industry should not be relied upon without any verification from the Authority.

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

- 40. The domestic industry has submitted as follows with regard to the normal value, export price and dumping margin.
  - a. China PR should be treated as an NME in accordance with Article 15(a)(i) of China's Accession Protocol and the normal value should be determined in terms of Annexure I, Rule 7 of the Rules.
  - b. Paragraph 8 of Annexure I to the Rules leaves no choice to the Authority but to presume that China is an NME, unless the exporters prove otherwise. Therefore, regardless of the expiry of Section 15(a)(ii) of China's accession protocol, the Authority is bound by Paragraph 8 to presume that China is an NME.
  - c. Market economy status is not automatic upon the expiry of Section 15(a)(i), but rather, it would require China's compliance with the other provisions of Section 15 of the Accession Protocol.

- d. The market economy claim of the exporters should not be accepted, as there is significant government intervention in several important sectors of the Chinese economy, warranting the maintenance of non-market economy status of China PR.
- e. Market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules.
- f. The market economy claim of the producers from China PR was rejected on the same basis in several recent investigations.
- g. Market economy status cannot be given unless the responding Chinese exporters establish that the actual purchase prices of major inputs substantially reflect market values.
- h. Market economy treatment must be rejected if Chinese exporters are unable to establish that their books are consistent with International Accounting Standards.
- i. It is not for the Authority to establish that the responding companies are operating under market economy environment. But it is for the responding Chinese exporters to establish that they are operating under market economy conditions.
- j. Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group has not filed the response, the claim for market economy status must be rejected.
- k. The normal value in China PR can thus be determined on the basis of cost of production in India, duly adjusted, including selling, general and administrative expenses and profit as per the consistent practice of the DGTR.

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

- 41. The Authority sent questionnaires to the known producers / exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The following producers have filed response to the exporter's questionnaire:
  - a. Cybrid Technologies Inc.
  - b. Jollywood (Suzhou) Sunwatt Co., Ltd.
  - c. Changzhou Huitian New Material Co.
  - d. Shanghai Huitian New Material Co., Ltd
- 42. The Authority has noted that Cybrid Technologies Inc., has attempted to mislead the Authority by providing incorrect information regarding the nature of operations of its

related party. In view thereof, the Authority has decided to reject the questionnaire response filed by the Cybrid Technologies Inc., and not to determine an individual dumping margin for the said producer/exporter.

### **G.3.1. Determination of normal value**

#### **Examination of Market Economy Treatment**

43. The Authority sent questionnaires to the known producers / exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The Authority notes that none of the producers/exporters have filed a response to the relevant questionnaire to claim market economy treatment. Therefore, the Authority holds that it is appropriate to construct the normal value for the exporters in accordance with Para 7 of Annexure I of the Rules.

#### **Normal value for China PR**

44. Article 15 of China's Accession Protocol to the WTO provides as follows:

*“Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*

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

*(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*

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

*(b) In proceedings under Parts II, III and 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.*

45. The applicant has relied upon Article 15(a)(i) of China's Accession Protocol as well as para 7 of the Annexure I. The applicant has claimed that producers in China PR must be asked to demonstrate that market economy conditions prevail in their industry producing the like product with regard to the manufacture, production and sale of the product under consideration. It has been stated by the applicant that in case the responding Chinese producers are not able to demonstrate that their costs and price information are market-driven, the normal value should be calculated in terms of provisions of Para 7 and 8 of Annexure- I to the Rules.
46. It is noted that while the provision contained in Section 15 (a)(ii) has expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO Anti-dumping Agreement read with the obligation under Section 15(a)(i) of the Accession Protocol require criterion stipulated in paragraph 8 of Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming market economy treatment. It is noted that since the responding producers/exporters from China PR have not submitted response to the supplementary questionnaire the normal value computation is required to be done as per the provisions of paragraph 7 of Annexure I of the Rules.

47. As none of the producers from China PR have claimed determination of normal value on the basis of their own data/information, the normal value has been determined in accordance with paragraph 7 of Annexure I of the Rules, which reads as under:

*“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner [keeping in view the level of development of the Country concerned and the product in question] and due account shall be taken of any reliable information made available at the time of the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”*

48. The Authority notes that under the provisions of para (7) of Annexure I, the normal value may be determined on the basis of price or constructed value in a third country, or the price from such country to other countries, including India. However, when such basis is not possible, only then the Authority can determine normal value on any other reasonable basis, including the price paid or payable in India.
49. As per paragraph 7 of Annexure I to the Rules, the Authority may move to the third method of determining normal value on any reasonable basis, when it has exhausted the first method, that is, price or constructed value in third country, and second method, that is, price from third country to other countries, including India. However, it is noted that no information/evidence has been provided by the parties for the construction of the normal value on the basis of the first two methods. The Authority has not been provided with information regarding the price or constructed value of the subject goods in a market economy third country, or the price from such third country to other countries, including India. In the absence of the above information/evidence, it is not possible for the Authority to determine normal value on the basis of the first or second method. Therefore, the Authority has decided to construct normal value based on the third method, i.e., *on any other reasonable basis*.

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

#### **Export price for cooperating exporters/producers**

### **Jolywood (Suzhou) Sunwatt Co., Ltd.**

50. M/s Jolywood (Suzhou) Sunwatt Co., Ltd. (“Jolywood”) is a producer of the subject goods in China PR. Jolywood has exported the subject goods directly to un-related customers in India.
51. It is noted that Jolywood has reported both PUC and NPUC in Appendix-3A submitted to the Authority. The Authority has considered only the PUC transactions for determining the export price and landed value for Jolywood. During the POI, Jolywood has exported \*\*\* MT of PUC directly to unrelated customers in India. Jolywood has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses and credit cost, which have been allowed by the Authority. Further, the Authority has also made appropriate adjustment for bank charges. Accordingly, the export price for the subject goods at ex-factory level has been determined and shown in the dumping margin table below.

### **M/s Changzhou Huitan New Material Co. Ltd**

52. M/s Changzhou Huitan New Material Co. Ltd (“Changzhou”) is a producer of the subject goods in China PR. Changzhou has exported the subject goods through its related exporter, M/s Shanghai Huitan New Material Co. Ltd (“Shanghai”) during the POI to un-related customers in India.
53. It is noted that Changzhou has exported \*\*\*sqm of subject goods to India during the POI at a price of RMB \*\*\* per sqm. However, Changzhou has domestically sold \*\*\* sqm of subject goods in China PR during the POI at a price of RMB \*\*\*per sqm. The export price to India is thus around 50-60% higher than the domestic selling price for the PUC. Changzhou has not given any cogent reason for such a huge difference between the export price to India and domestic selling price in China PR. The Authority believes that there is no economic rationale for export price to India being higher by 50-60% as compared to domestic selling price for the same PUC. The Authority also notes that the export price of Changzhou to India is 45-55% higher than the export price of other cooperating producer/exporter of China PR. In view of the above, the Authority holds not to accept the export price of Changzhou as it is not considered reliable and accordingly not determine individual dumping margin for Changzhou.

### **Export price non-cooperating producers/exporters from China PR**

54. The export price for all other producers and exporters that have not participated in the present investigation has been determined on the basis of facts available.

### **G.3.3. Determination of Dumping Margin**

55. Considering the normal value and export price for the subject goods, the dumping margin for the subject goods from the subject country is determined as follows:

S N	Name of Producer	Currency / Unit	Constructed Normal Value	Export Price	Dumping Margin	Dumping Margin (%)	Dumping Margin (Range)
1.	Jolywood (Suzhou) Sunwatt Co., Ltd.	Rs/MT	***	***	***	***	20-30
		USD/MT	***	***	***	***	20-30
2.	Non-cooperative / residual exporters	Rs/MT	***	***	***	***	30-40
		USD/MT	***	***	***	***	30-40

56. The dumping margin is more than de-minimis for all the producers/exporters from China PR.

## H. EXAMINATION OF INJURY AND CAUSAL LINK

### H.1. Submissions by the other interested parties

57. The other interested parties have submitted as follows with regards to injury and causal link.
- It was submitted that the domestic industry has not suffered material injury in the current investigation. All volume related parameters such as production, capacity utilization, domestic sales, productivity, no. of employees etc. have significantly increased over the injury investigation period.
  - With regard to market share it may be seen that the market share of the domestic industry has marginally come down in the POI as compared to base year. However, there was an increase in market share in the POI as compared to the previous year i.e. 2018-19.
  - Decrease in market share is as a result of the lockdown and not the dumped imports. Furthermore, the domestic industry did not face any difficulty in selling the subject goods since there is no volume injury.
  - Domestic sales, the number of employees and wages, and the productivity of the domestic industry has improved during the POI.
  - With respect to inventories, CESTAT in *Bridgestone Tyres Manufacturing (Thailand) v. D.A., 2011 (270) E.L.T. 696 (Tri.-Del.)*, has held that the correct way to analyze the inventories is to compare the closing inventories with the domestic sales made by the domestic industry.

- f. On the basis of this method, the domestic industry has faced only a small decline in inventories over the injury investigation period, which has not impacted its ability to sell the subject goods even at a high price.
- g. There is no impact on growth or effect of the domestic industry to raise capital.
- h. The domestic industry has faced no price injury since the decline in its domestic price is as a result of the decline in costs. This also indicates that the domestic industry is in a position to hold on to its prices.
- i. With regard to positive price undercutting, it was submitted that this alone cannot be considered as a factor of injury. It was submitted that there has been an improvement of 110% in profitability of the domestic industry during the injury investigation period.
- j. The other interested parties sought to draw parallels in the instant investigation with the case of *Bridgestone (supra)*.
- k. The decrease in profits should correspond with the decrease in cost of sales and selling price. However, as per the information provided by the applicant, there is no correlation between the decline in cost of sales and selling price on one hand, and decline in PBIT on the other.
- l. Figures provided by the applicant regarding PBIT are mutually inconsistent. On the one hand, the PBIT per unit is indicated as negative in 2017-18, on the other hand the total PBIT for 2017-18 is indicated as positive.
- m. The increase in imports from China PR is commensurate with the increase in demand for the subject goods in India.
- n. The installed capacity of the petitioner has remained stagnant throughout the injury investigation period but the demand in India has risen during the POI. Further, the capacity utilisation of the domestic industry is more than 108%, indicating that the petitioner has suffered no injury in operations.
- o. There is no effect on the capacity utilisation over the injury investigation period. The production and capacity utilization of the domestic industry have increased over the injury investigation period.
- p. Increase in imports has taken place due to the inability of the domestic industry to meet the domestic demand in India.
- q. The injury suffered by the domestic industry is due to the impact of Covid-19, and not the alleged dumping in India.
- r. The price undercutting throughout the injury investigation period has remained 0-20%. Despite the constant price undercutting range, there is substantial profit earned by the domestic industry.
- s. The cost of sales has reduced more than the decline in selling price during the POI. This shows that there is no price pressure due to dumped imports on the domestic industry.
- t. The domestic sales of other Indian producers have increased during the POI as compared to the applicant.
- u. Export performance of the domestic industry has also come down.
- v. The lack of technological capacity of the domestic industry is the cause for its injury. It was submitted that the domestic industry does not have the technology to

- produce partially/fully coated backsheets, which is preferred by the downstream user industry.
- w. Although the volume of imports from the subject countries has increased during the POI, it was submitted that the volume of sales of the domestic industry has also increased, which shows that the domestic industry is not suffering injury as a result of imports/dumping.
  - x. The increase in inventories during the POI must be analysed in the context of domestic sales also increasing during the same period.
  - y. Decline in cash profits is not representative of the situation of alleged dumping since out of the 12 months of the POI, seven months were affected by either partial or complete lockdown as a result of Covid-19.
  - z. Productivity and number of employees of the domestic industry has increased exponentially.
  - aa. Due to development of technology, module producers prefer coated Fluoro Backsheets instead of laminated Fluoro Backsheets.
  - bb. There has been only a 1% decline in landed price. However, all the other price injury parameters of the domestic industry have declined disproportionately to the decline in landed price. This indicates that there is no causal link.

## **H.2. Submissions by the domestic industry**

58. The domestic industry has made the following submissions with regard to injury and causal link.
- a. Imports from the subject country have almost doubled during the POI as compared to the base year. Further, imports from the subject country constitute almost 100% of the total imports of the product under consideration.
  - b. The landed value of the dumped goods is lower than the prices of the subject goods produced by the domestic industry.
  - c. The import prices from China PR are below the cost of production and net sales realization of the domestic industry, thereby indicating price suppression/depression.
  - d. The market share of the dumped imports has increased significantly, and the volume of imports is nearly three times the level of production by the Indian producers.
  - e. It was submitted that the demand in the domestic market has increased substantially. However, market share of the domestic industry has declined.
  - f. At the same time, the market share of the subject country in demand has increased from the base year to the POI.
  - g. The capacity utilization of the domestic industry has decreased. Further, significant capacities of the domestic industry remain unutilized on account of the dumped imports from the subject country.
  - h. Around 50% of the production capacity of the domestic industry remains unutilized despite significant increase in demand.

- i. Share of imports in demand increased by 15%, while share of domestic industry in demand decreased by 1%.
- j. Due to the low-priced imports, the domestic industry is forced to sell at low price in order to get a fair market share.
- k. The sales of the domestic industry have gone down during the POI as compared to the previous year.
- l. The domestic industry has suffered severe impact to its profitability due to the dumped imports.
- m. Improvement in a few parameters cannot be construed to mean that there is no injury to the domestic industry.
- n. The submission that injury is due to the effects of Covid-19 have no basis.
- o. The exporters from the subject country enjoyed a dominant position in the Indian market despite the onset of Covid-19.
- p. Despite the increase in demand of the subject goods during the POI, half of the capacities of the domestic industry remained unutilized.

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

59. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties.
60. Submissions were received from the interested parties alleging that the injury faced by the domestic industry is on account of the lockdown imposed due to the onset of Covid-19 pandemic. In order to nullify the effect of lockdown on account of Covid 19 pandemic and bring objectivity in injury analysis, the injury data for quarter April-June 2020 has been taken out and data for remaining nine months of POI has been annualized.

### **I. Volume of the dumped imports**

61. 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 the subject country and share of the dumped imports during the injury investigation period are as follows:

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Imports from subject country	MT	***	***	***	***	***
Trend	Indexed	100	144	313	248	331

Imports from Other country	MT	***	***	***	***	***
Trend	Indexed	100	202	48	4	6
Total	MT	***	***	***	***	***
Trend	Indexed	100	154	267	206	274
% share of subject country in imports	%	***	***	***	***	***
Trends in imports from the subject country	Indexed	100	144	313	248	331
Total demand	MT	***	***	***	***	***
Trend	Indexed	100	150	252	212	283
Share of subject country in demand	%	***	***	***	***	***
Trend	Indexed	100	96	124	117	117

62. The imports from the subject country have increased throughout during the injury investigation period. The Authority notes that the demand for the subject goods has consistently increased during the entire injury investigation period. Imports of the subject goods from the subject country have increased in absolute terms during the entire injury investigation period.

## II. Imports from the subject country relative to production and consumption

63. The Authority has analyzed the increase of imports from the subject country both in absolute terms and relative terms by comparing the imports with the domestic production for each year:

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Subject imports	MT	***	***	***	***	***
Trend	Index	100	144	313	248	331
Domestic production	MT	***	***	***	***	***
Trend	Index	100	158	277	224	299
Total demand	MT	***	***	***	***	***
Trend	Index	100	150	252	212	283
Share of subject country in demand	%	***	***	***	***	***
Trend	Index	100	96	124	117	117
Share of subject country in relation to domestic production	%	***	***	***	***	***
Trend	Index	100	91	113	110	110

64. The Authority notes that the share of imports from subject country relative to the consumption and production has increased till 2019-20 and thereafter declined slightly during the POI.

### III. Price effect of the dumped imports

65. 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 the domestic industry for the subject goods.

#### a. **Price undercutting**

66. To determine price undercutting, a comparison has been made between the landed value of the product and the net selling price of the domestic industry, net of all rebates and taxes, at the same level of trade.

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Import Volume	MT	***	***	***	***	***
Trend	Indexed	100	144	313	248	331
Net Selling price	Rs/MT	***	***	***	***	***
Trend	Indexed	100	85	77	73	73
Landed price of imports	Rs/MT	***	***	***	***	***
Trend	Indexed	100	80	70	67	67
Price undercutting	Rs/MT	***	***	***	***	***
Price undercutting	%	***	***	***	***	***
Price undercutting	%Range	(0-20%)	0-20%	0-20%	0-20	0-20

67. It is noted from the above that price undercutting is positive throughout injury investigation period except during the base year (2017-18).

#### b. **Price underselling**

68. The price underselling on the basis of the available import data of subject country for the POI is positive and significant as tabulated in the following table:

Particulars	Unit	China PR
NIP	Rs/MT	***
Landed price of imports	Rs/MT	***
Price underselling	Rs/MT	***
Price underselling	%	***
Price underselling	%Range	20-30

69. The Authority notes that landed value of imports of the subject goods from subject country is much below the NIP of the domestic industry indicating significant price underselling.

**c. Price suppression/depression**

70. 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.

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Landed value from subject country	Rs./MT	***	***	***	***	***
Trend	Indexed	100	80	70	67	67
Domestic Selling price	Rs./MT	***	***	***	***	***
Trend	Indexed	100	85	77	73	73
Cost of Sales	Rs./MT	***	***	***	***	***
Trend	Indexed	100	80	74	73	73

71. It is seen that imports from subject country are coming at prices below the cost of sales and the selling price of the domestic industry and thereby causing price suppression effect for the domestic industry.

**IV. Economic parameters of the domestic industry**

72. Annexure II to the Rules 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 below.

**a. Changes in Market Share held by the Indian Producers**

73. Market share of the domestic industry and other Indian producers is as below:

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Domestic industry Sales	MT	***	***	***	***	***
Trend	Indexed	100	140	200	167	223
Sales of other domestic producers	MT	***	***	***	***	***
Trend	Indexed	100	70	385	1515	2022
Total domestic sales	MT	***	***	***	***	***
Trend	Indexed	100	137	209	232	309
Imports from subject country	MT	***	***	***	***	***
Trend	Indexed	100	144	313	248	331
Imports from Other country	MT	***	***	***	***	***
Trend	Indexed	100	202	48	4	6
Total	MT	***	***	***	***	***
Trend	Indexed	100	154	267	206	274
Total demand	MT	***	***	***	***	***
Trend	Indexed	100	150	252	212	283
Market share of domestic sales in demand	%	***	***	***	***	***
Trend	Indexed	100	92	84	112	112
Market share of imports from subject country in demand	%	***	***	***	***	***
Trend	Index	100	96	124	117	117

74. The Authority notes that the market share of domestic producers declined till 2019-20 and thereafter increased during the POI. The Authority further notes that the market share of imports from subject country increased till 2019-20 and thereafter declined during the POI.

**b. Output and Capacity Utilization**

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

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Capacity	MT	***	***	***	***	***
Trend		100	100	100	75	100
Total Production	MT	***	***	***	***	***
Trend		100	167	225	197	263
Production (PUC only)	MT	***	***	***	***	***
Trend		100	158	277	224	299
Capacity Utilisation	MT	***	***	***	***	***
Trend		100	164	224	260	260

76. The Authority notes that the capacity of the domestic industry has remained constant throughout the entire injury investigation period. The production and capacity utilization of the domestic industry has consistently improved during the entire injury investigation period.

**c. Inventories**

77. Inventories with the domestic industry over the injury period are as below:

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 M	Annualized
Average inventory	MT	***	***	***	***	***
Trend	Indexed	100	56	539	133	177

78. It is seen that the average inventories of the domestic industry increased till 2019-20 and thereafter declined during the POI.

**d. Employment, wages and productivity**

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

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Production	MT	***	***	***	***	***
Trend	Index	100	158	277	224	299
No of employees	Nos	***	***	***	***	***
Trend	Indexed	100	127	127	127	127
Productivity per employee	MT per employee	***	***	***	***	***
Trend	Indexed	100	126	221	179	239

Wages per employee	Rs per Employee	***	***	***	***	***
Trend	Index	100	84	111	73	97

80. It is seen that the productivity per employee has improved during the injury investigation period.

**e. Sales Volume & Value**

81. The authority has examined the sales of the domestic industry as under:

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Sales	MT	***	***	***	***	***
Trend	Index	100	140	200	167	223
Selling Price	MT	***	***	***	***	***
Trend	Index	100	85	77	73	73

82. It is noted that the domestic sales of the domestic industry have consistently improved during the injury investigation period. However, there has been a constant decline in the selling price of the domestic industry.

**f. Profitability, cash profits and return on capital employed**

83. Profitability, return on investment and cash profits of the domestic industry over the injury period are as follows:

Particulars	Unit	2017-18	2018-19	2019-20	POI	
					9 months	Annualized
Sales	MT	***	***	***	***	***
Trend	Indexed	100	140	200	167	223
Sales value	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	120	154	122	163
Selling price/unit	Rs./MT	***	***	***	***	***
Trend	Indexed	100	85	77	73	73
Cost	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	112	147	125	167
Cost per unit	Rs/MT	***	***	***	***	***
Trend	Index	100	80	74	73	73
Profit/loss per unit	Rs/MT	***	***	***	***	***

Trend	Indexed	-100	1089	687	-59	-59
Profit/loss on cost of sales	%	***	***	***	***	***
Trend	Indexed	-100	1365	932	-80	-80
Capital employed	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	98	117	87	117
PBIT	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	588	538	-10	-13
ROCE%	%	***	***	***	***	***
Trend	Indexed	100	598	462	-11	-11
Profit/loss	Rs. Lacs	***	***	***	***	***
Trend	Indexed	-100	1520	1366	-100	-130
Depreciation	Rs. Lacs	***	***	***	***	***
Trend	Index	100	99	125	87	116
Cash flow (profit before depreciation)	Rs. Lacs	***	***	***	***	***
Trend	Index	100	331	339	85	114
Cash flow/unit	Rs/MT	***	***	***	***	***
Trend	Index	100	209	122	38	38

84. From the aforesaid table, the Authority notes as follows:

- a. The domestic industry earned reasonable profit per unit during the 2018-19 and 2019-20. However, the domestic industry turned into losses during the POI.
- b. The PBIT of domestic industry was negative during the POI.
- c. The ROCE of domestic industry was negative during the POI.
- d. The cash profit of the domestic industry reduced significantly during the POI.

**g. Growth**

85. The performance of the domestic industry has improved in volume parameters such as production, domestic sales, capacity utilization and market share. The performance of the domestic industry has shown deterioration in price parameters such as profit per unit, PBIT, cash profits and ROCE.

Particulars	2018-19	2019-20	Annualized
Production	58%	75%	8%
Domestic Sales	40%	43%	12%
Profit/(Loss) per unit	1189%	-37%	-109%
Inventory	-44%	870%	-67%

Market Share	-2%	-2%	4%
Profit/(Loss)	1620%	-10%	-110%
Cash Profit	231%	2%	-66%
PBIT	488%	-8%	-102%
ROI %	4%	-1%	-4%

**h. Ability to raise capital investment**

86. The Authority notes that the ability of the domestic industry to raise capital investment has not been affected due to subject imports.

**i. Factors affecting prices**

87. The Authority notes that the volume of imports during the period of investigation was significant, and therefore, caused a strain on the prices of the domestic industry. Selling price of the domestic industry has been severely affected by the subject imports.

**j. Magnitude of dumping**

88. It is noted that the dumping margin from the subject country is significant and indicative of the aggressive pricing of the subject goods.

**I. CONCLUSION ON INJURY**

89. The authority notes that the volume of imports has increased in absolute terms during the POI. The volume of imports in relation to production and consumption in the country has also increased continuously with a marginal decline in the POI. The import prices have declined consistently throughout the injury investigation period, the import price being the lowest during the POI. The price pressure exerted by the subject imports has affected the profitability, ROCE and other parameters of the domestic industry indicating substantial price injury. The domestic industry is suffering financial losses in the POI. Therefore, the Authority concludes that the domestic industry has suffered material injury.

**J. MAGNITUDE OF INJURY MARGIN**

90. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the Rules has been compared with the landed value of the exports from the subject country for determination of injury margin during the period of investigation and the injury margin so worked out is as under:

SN	Name of producers	Currency / Unit	Landed price	Injury margin	Injury margin	Injury margin
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			<b>Non-injurious price</b>			<b>(%)</b>	<b>(Range)</b>
1.	Jolywood (Suzhou) Sunwatt Co. Ltd.	Rs/MT	***	***	***	***	30-40
		USD/MT	***	***	***	***	30-40
2.	Non-cooperative / residual exporters	Rs/MT	***	***	***	***	30-40
		USD/MT	***	***	***	***	30-40

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

91. 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 price of imports from third country**

92. The Authority notes that imports from other countries are insignificant and have substantially dropped throughout the entire injury investigation period.

##### **b. Contraction in demand**

93. It is noted that the demand of the subject goods has increased throughout the injury investigation period and thus not a cause of injury.

##### **c. Changes in pattern of consumption**

94. There has been no material change in the pattern of consumption of the product under consideration. Hence, contraction in demand cannot be a factor responsible for injury.

##### **d. Trade restrictive practices and competition between the foreign and domestic producers**

95. The imports of the subject goods are not restricted in any manner and are freely importable in the country.

**e. Export performance**

96. The Authority has considered data for the domestic operations only. Hence, any possible deterioration in the export performance of the domestic industry cannot be a cause for the injury to the domestic industry.

**f. Productivity**

97. The Authority notes that the productivity of the domestic industry has improved during the injury investigation period.

**g. Performance of other products of the company**

98. The Authority has only considered data relating to the performance of the subject goods. Therefore, performance of other products produced and sold are not a possible cause of the injury to the domestic industry.

**L. CONCLUSION ON CAUSAL LINK**

99. The Authority notes that the domestic industry has not suffered injury on account of other known factors listed above.
100. The Authority, thus, concludes that the domestic industry has suffered material injury on account of the dumped imports from the subject country.

**M. POST-DISCLOSURE SUBMISSIONS**

101. The Authority issued the disclosure statement on 16<sup>th</sup> March 2022 disclosing essential facts under consideration in the investigation and inviting comments from all the interested parties. Most of the issues raised in the post-disclosure comments have already been raised earlier and addressed appropriately hereinabove. Additional submissions to the extent relevant have been examined below:

**M.1. Submissions of the other interested parties**

102. Following submissions have been made by the other interested parties:
- a. Non-exclusion of partially/fully coated fluoro backsheet from the scope of PUC should be re-examined.
  - b. The Authority should clarify whether the domestic industry has engaged merely in supply of fully/partially coated fluoro backsheet in sample quantities or the domestic industry has made merchant sales of fully/partially coated fluoro backsheet in commercial quantities.

- c. The Authority is requested to confirm if fully/partially coated fluoro backsheet has been purchased by any of the participating importers/users from the domestic industry. The Authority should also cross-verify the claims of the domestic industry regarding the sales of coated fluoro backsheet with the information provided by the importers/users.
- d. Objective examination of imports from the subject country will show that they are not displacing the sales of the domestic industry in India.
- e. Profitability parameters of the domestic industry during the POI requires further examination.
- f. 22% rate of return on capital employed to determine Non-Injurious Price (NIP) used for calculation of injury margin is exaggerated.
- g. The Authority has rightly excluded transparent backsheet from PUC. However, the Authority is requested to clarify whether the same has been excluded while computing the export price of other cooperating exporters.
- h. Product exclusion should be clearly mentioned below the duty table.
- i. M/s Cybrid Technologies Inc. has requested that the ex-factory price and landed value mentioned in the disclosure statement should be considered while issuing the final findings.
- j. The Authority has incorrectly decided to reject the export price of M/s Changzhou Huitan New Material Co. Ltd.
- k. The products sold by Changzhou in domestic market is different than the products exported by it to India. Out of 22 product types sold by Changzhou in domestic market, only 2 have been exported to India, thus, a price comparison between average domestic prices of Changzhou with its export price is not appropriate.
- l. The export price of the grade exported by Changzhou to India is less than the domestic selling price of the same grade sold by it in the domestic market.

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

103. Following submissions have been made by the domestic industry:

- a. The disclosure statement clearly brings out the fact that the domestic industry has suffered material injury on account of dumped imports from China.
- b. The Authority should revisit its decision in relation to acceptance of exporters' questionnaire response for M/s Cybrid Technologies Inc. and M/s Jolywood (Suzhou) Sunwatt Co. Ltd.
- c. The Annual report of Cybrid clearly mentions that their related party M/s Jiangsu Haohua PV Technology Co., Ltd. is involved in production and sales of the PUC.
- d. Cybrid is a public limited company listed on Shanghai Stock Exchange (stock code: 603212). Chapter II, Rules 2.1 and 2.2 of Rules Governing the Listing of Stocks on Shanghai Stock Exchange (Revised in 2019), requires the relevant company to "guarantee the truthfulness, accuracy and completeness of the information disclosed." Additionally, Rule 2.2 requires the company and its directors provide an explanation in

case they are “unable to guarantee the truthfulness, accuracy and completeness of the information”.

- e. Cybrid has tried to mislead the Authority by providing a non-binding declaration certified by auditor (not statutory auditor), to contradict the specific admission in their Annual Report which is a statutory document and has been certified by the statutory auditor.
- f. Assuming but not accepting that the claim made by them is correct, the said exporter has not offered any cogent explanation as to why their Annual Report, which is submitted to a statutory body, should not be considered as true by the Authority which specifically states that their said related party is involved in the production and sales of the PUC.
- g. The Authority should not believe the hollow claims of Jolywood in the absence of any explanation regarding their sales document mentioning “AMC Inc.” as their sales office in India.
- h. The domestic industry understands from its sources that M/s Changzhou has only sold sample quantities of specialized products in India. Therefore, the said exporter should not be granted individual dumping margin.

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

104. The Authority notes that most of the submissions raised by the interested parties are repetitive and has already been addressed hereinabove. The submissions made by the interested parties, to the extent relevant and not addressed elsewhere, is examined below:

- a. As regards the submissions regarding non-exclusion of coated/partially coated backsheets, the Authority notes that the domestic industry has demonstrated that they manufacture such types of backsheets. As already noted in the disclosure statement, the domestic industry has also provided commercial invoices demonstrating sales of such types of backsheets. Some quantities of these products have also been sold to the participating importers. Thus, the Authority confirms its decision regarding non-exclusion of coated/partially coated backsheet from the scope of the PUC.
- b. As regards the submission regarding the profitability of the domestic industry, the Authority notes that the error in computation of the cost of production has been rectified appropriately in these final findings.
- c. As regards the submissions made by M/s Changzhou Huitan New Material Co. Ltd. requesting acceptance of their export price and determination of individual rate of duty for them, the Authority notes as under:
  - In the post disclosure comments, Changzhou has claimed that they have sold 22 product types in the domestic market whereas they have exported only 2 product types to India. Out of these 2 product types exported to India, one product type is transparent backsheets which has been excluded by the Authority from the scope of PUC. The other product type exported to India is HTPV340S BK. In the present case, the Authority has not adopted any PCN methodology for calculating dumping margin and injury margin. So, the Authority is not required to conduct a grade-to-grade analysis and accordingly the comparison between average export price to India with the

average domestic selling price would be the correct approach to ascertain the reliability of the export price in the facts of the present case.

- Secondly, even if the Authority accepts the contention of Changzhou that the export price to India should be compared with the domestic selling price of the same product type to ascertain whether the export price is reliable or not, it is noted that the product type exported to India is PV340S as reported by Changzhou in its Exporters Questionnaire Response and not HTPV340S BK as claimed by Changzhou in its post disclosure comments. For product type PV340S, export price to India is RMB \*\*\* per sqm whereas the domestic selling price of this product type is RMB \*\*\*per sqm. This again shows that the export price to India is 50-60% higher than the domestic selling price.
- Thirdly, the Authority also notes that the quantity exported by Changzhou to India during the POI is very low as compared to the exports made by other participating producers/exporters from China PR and the total imports of the PUC from China PR. The exports made by Changzhou to India are approximately 0.20% of the total imports into India.
- In view of the above facts read with the observations made by the Authority in para 53 and 54 of the final findings, the Authority confirms that export price of Changzhou is not considered as reliable and accordingly no individual dumping margin and injury margin is being determined for Changzhou.

- d. The domestic industry has submitted that the questionnaire response filed by Cybrid Technologies Inc., should be rejected by the Authority because the company has made incorrect declaration with respect to the operations of one of its related company, Jiangsu Haohua PV Technology Co. Ltd., by not disclosing the fact that this related company is also engaged in the production and sales of the product under consideration. The domestic industry has emphasized the fact that the Annual Report of Cybrid Technologies Inc., clearly specifies that Jiangsu Haohua PV Technology Co., Ltd. is engaged in the production and sales of the product under consideration. On the other hand, Cybrid Technologies Inc., has submitted that its related company, Jiangsu Haohua PV Technology Co. Ltd., is not engaged in the production and sales of the product under consideration. The Authority has examined this issue in detail and notes that there is merit in the submission of the domestic industry that the information contained in the Annual Report, the same being a statutory document, should be given due weightage and importance. This assumes even more significance considering the fact that the said exporter is a public limited company listed on Shanghai Stock Exchange which legally requires the listed companies and its directors to take “guarantee” of the information supplied. Therefore, the Authority is of the view that Cybrid Technologies Inc., has attempted to mislead the Authority by providing incorrect information regarding the nature of operations of its related party. In view thereof, the Authority has decided to reject the questionnaire response

- filed by the Cybrid Technologies Inc., and not to determine an individual dumping margin for the said producer/exporter.
- e. As regards the submission of the domestic industry about the relationship between Jollywood and Indian importer AMC Inc., it is noted that the same has been duly appropriately examined and dealt at para 35 of these final findings.

## **N. INDIAN INDUSTRY'S INTEREST AND PUBLIC INTEREST**

105. The Authority examined based on information on record whether imposition of the proposed ADD will be against public interest.
106. It is noted that initiation notification was issued inviting views from all interested parties including importers, consumers and others. Questionnaires were issued for users/consumers to provide relevant information including possible effect of ADD on their operations. Some importers have claimed adverse impact of ADD but the said importers have not provided any quantified or verifiable information to demonstrate possible adverse effect of the proposed ADD on the consumers and public at large. The interested parties have thus not established any adverse impact of ADD on the user industry with verifiable information. On the other hand, the domestic industry has quantified the impact of the proposed ADD on the subject goods and found it to be 0.80% on the solar panels only assuming anti-dumping duty @ 20%, which is insignificant.
107. The Authority notes that the purpose of ADD, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to 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 does not restrict imports from the subject country in any way. The Authority further notes that the subject goods are produced and imported into India majorly from the subject country. More than 99% of the imports of the subject goods into India during the POI were from China PR only. The imposition of the anti-dumping measures would not only provide a level playing field to the domestic industry but shall also allow the exporters from other countries to export subject goods to India, thus, providing wider range of choices to the consumers. The imposition of ADD would also not restrict imports from the subject country or affect the availability of the product to the consumers.
108. The Authority notes that the imposition of anti-dumping measure in fact 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. The Authority notes that the domestic industry themselves have the capacities to meet almost the entire Indian demand.
109. Further, the capacity utilization of the domestic industry has been low in the POI. The Indian industry has the potential to cater to a higher share of the Indian market. However, due to the dumped import of the product under consideration, the Indian industry is faced with unutilized capacity and has much smaller share in domestic market than what otherwise would have been.

110. In view of the foregoing, the Authority is of the view that the imposition of ADD will not be against public interest.

**O. CONCLUSION AND RECOMMENDATIONS**

111. Having regard to the contentions raised, submissions made, information provided and facts available before the Authority as recorded above and on the basis of the above analysis of dumping and consequent injury to the domestic industry, the Authority concludes that:

- a. The product under consideration has been exported to India at a price below the normal value, resulting in dumping. The dumping margin is not only above *de-minimus* level but substantial also.
- b. The imports from the subject country have increased in absolute terms throughout the injury investigation period.
- c. The price undercutting during the period of investigation and the preceding two years have been positive.
- d. The landed value of imports of the subject goods from subject country is much below the non-injurious price of the domestic industry indicating significant price underselling.
- e. The imports from subject country are at prices even below the cost of sales. The imports are also causing price suppression effect on the domestic industry.
- f. The domestic industry is running into losses during the period of investigation. Even the profit before interest and tax (PBIT) and return on capital employed (ROCE) are negative as well during the period of investigation. The cash profits of the domestic industry have also declined substantially during the POI.
- g. The domestic industry has accordingly suffered material injury.
- h. The injury caused to the domestic industry is not on account of any other known factors.
- i. Therefore, the dumped imports from the subject country have only caused material injury to the domestic industry.
- j. The information on record shows that the non-imposition of the anti-dumping duty will have minimal impact the consumers or the downstream industry.
- k. The imposition of the anti-dumping duty thus will not be against the public interest.

112. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that imposition of the anti-dumping duty is required to offset the dumping and consequent injury. The Authority considers it necessary to recommend imposition of the anti-dumping duty on the imports of the subject goods originating in or exported from the subject country.

113. Having regards to the lesser duty rule followed, the Authority recommends imposition of antidumping duty equal to the lesser of the margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of anti-dumping duty on the imports of subject goods originating

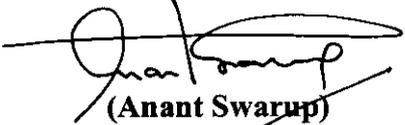
in or exported from the subject country for a period of five years from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below. The landed value of the imports for this purpose shall be the assessable value as determined by the Customs under Customs Act, 1962 and applicable level of the customs duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

**DUTY TABLE**

<b>S.N</b>	<b>Heading</b>	<b>Description</b>	<b>Country of origin</b>	<b>Country of Export</b>	<b>Producer</b>	<b>Amount</b>	<b>Unit</b>	<b>Currency</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
1.	3920, 3921	Fluoro Backsheet excluding transparent backsheet	China PR	Any Country including China PR	Jolywood (Suzhou) Sunwatt Co. Ltd.	762	MT	USD
2.	3920, 3921	Fluoro Backsheet excluding transparent backsheet	China PR	Any Country including China PR	Any producer other than at S.No.1	908	MT	USD
3.	3920, 3921	Fluoro Backsheet excluding transparent backsheet	Any country other than China PR	China PR	Any	908	MT	USD

**P. FURTHER PROCEDURE**

114. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal.

  
**(Anant Swarup)**  
**Designated Authority**