

**To be published in Part-I Section I of the Gazette of India Extraordinary**  
**F. No. 6/1/2022-DGTR**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Trade Remedies**  
**4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi -110001**

**Dated: 5<sup>th</sup> May 2023**

**FINAL FINDINGS**

**Case No. A.D (OI)-01/2022**

**Subject: Anti-dumping investigation concerning imports of "Dispersion Unshifted Single-mode Optical Fiber" (SMOF) originating in or exported from China, Indonesia and Korea RP.**

**F. No. 6/1/2022-DGTR:** - 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 thereof, as amended from time to time (hereinafter referred as the AD Rules, 1995;

**A. BACKGROUND OF THE CASE**

1. M/s Birla Furukawa Fiber Optics Private Limited (hereinafter referred to as the "applicant") has filed an application before the Designated Authority (hereinafter referred to as the "Authority"), on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA, 1975") and the Anti-dumping Rules for initiation of anti-dumping investigation concerning imports of the "**Dispersion Un-shifted Single – Mode Optical Fiber**" (hereinafter also referred to as the "product under consideration", or the "subject goods") from China PR, Indonesia and Korea RP (hereinafter also referred to as the "subject countries").
2. The Authority, on the basis of sufficient *prima facie* evidence submitted by the applicant, issued a public notice vide Notification No. 6/1/2022-DGTR dated 6<sup>th</sup> May 2022, published in the Gazette of India, initiating the subject investigation in accordance with Section 9 of the CTA, 1975 Act read with Rule 5 of the AD Rules, 1995 to determine the existence, degree and effect of alleged dumping of the subject goods and to recommend the appropriate amount of anti-dumping duties, which if levied, would be adequate to remove the alleged injury to the domestic industry.

**B. PROCEDURE**

3. The following procedure has been followed with regard to this investigation:
  - a. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules, 1995.
  - b. The Authority issued a public notice dated 6<sup>th</sup> May 2022 published in the Gazette of India Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods from the subject countries.
  - c. The Authority sent a copy of the initiation notification dated 6<sup>th</sup> May 2022, to the Embassies of the subject countries in India, the known producers and exporters from the subject countries, the known importers/users of the subject imports and other interested parties, as per the information provided by the applicant. The interested parties were requested to provide relevant information in the form and manner prescribed in the initiation notifications and make their submissions known in writing within the time limits prescribed by the initiation notification.
  - d. The Authority also provided a copy of the non-confidential version of the application filed by the applicant to the known producers/exporters, known importers/users and to the Embassies of the subject countries in India in accordance with Rule 6(3) of the AD Rules, 1995 through its email dated 30<sup>th</sup> May 2022.
  - e. The Embassies of the subject countries in India were also requested to advise the exporters/producers from their countries to submit their responses to the questionnaire within the time limit prescribed by the initiation notification. The Embassies of the subject countries were also sent a copy of the letter and questionnaire sent to the producers/exporters along with the names and addresses of the known producers /exporters from their respective countries.
  - f. The Authority sent questionnaires to the known producers/exporters in the subject countries in accordance with Rule 6(4) of the AD Rules, 1995.
  - g. In response to the above notification, the following producers/ exporters from the subject countries have submitted the exporter questionnaire response:

<b>Subject country</b>	<b>Producer/Exporter</b>
China PR	Hangzhou Futong Communication Technology Co., Ltd.
	Fasten Group IMP. & EXP. Co. Ltd.
	Jiangsu Fasten Photonics Co. Ltd.
	Jiangsu Fasten Optical Cable Co. Ltd.
	Potevio Fasten Optical Communication Co. Ltd.
	Jiangsu Fasten Optical Communication Technology Co. Ltd.
Indonesia	None
Korea RP	None

Table B 1

- h. The producers/exporters from the subject countries who have not submitted the questionnaire response or have not cooperated in the investigation have been treated as non – cooperative in the investigation.
- i. The Authority also sent questionnaires to the known importers/users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules, 1995.
- j. The following importers/users submitted the importer/user questionnaire responses:

<b>S. No.</b>	<b>Details of user/importers</b>
1.	HFCL Ltd.

Table B 2

- k. Additionally, an association from China PR, namely, China Chamber of Commerce for Import & Export of Machinery & Electronic Products participated in the investigation.
- l. Upon the request of the exporters, the Authority granted an extension of one week to file the questionnaire responses.
- m. The Directorate General of Systems & Data Management (DG Systems) was requested to provide transaction-wise details of the imports of the subject goods for the past injury investigation period and the period of investigation. The same was received by the Authority and considered at the stage of initiation of the investigation. Later on, a request was also made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide transaction-wise details of the imports of the subject goods for the injury investigation period and the period of investigation. The same has been received by the Authority and has been considered in this final findings.

- n. In accordance with Rule 6(6) of the AD Rules, 1995 the Authority provided an opportunity to the interested parties for presenting their views orally regarding the subject investigation through a public hearing held via video conferencing on 10<sup>th</sup> October 2022. The interested parties who presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The interested parties were further directed to share the non-confidential version of the written submissions submitted by them with the other interested parties.
- o. The non-injurious price (hereinafter referred to as the 'NIP') has been determined based on the cost of production and reasonable profits of the subject goods in India, based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules, 1995 so as to ascertain whether anti-dumping duties lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- p. The information submitted by the applicant has been examined and verified during on site-verification to the extent deemed necessary and has been relied upon for the present final findings. The information submitted by the supporter, Corning India Technologies Ltd., regarding injury parameters has been examined and verified through desk verification to the extent deemed necessary and has been relied upon for the present final findings.
- q. The examination and verification of the information submitted by the cooperating producers/exporters from the subject countries<sup>1</sup> were also carried out to the extent deemed necessary and have been relied upon for the purpose of the present final findings.
- r. The period of investigation (POI) for the purpose of present investigation is 1<sup>st</sup> January, 2021 - 31<sup>st</sup> December 2021. The injury period for the present investigation is 1<sup>st</sup> April 2018 – 31<sup>st</sup> March 2019, 1<sup>st</sup> April 2019 – 31<sup>st</sup> March 2020, 1<sup>st</sup> April 2020 – 31<sup>st</sup> March 2021 and the POI.
- s. The Authority made available the non-confidential version of the evidence presented by various interested parties on mutual basis in the manner prescribed through Trade Notice no. 01/2020 dated 10<sup>th</sup> April 2020. The information/submissions provided by the interested parties on a confidential basis were examined concerning the sufficiency of such confidentiality claims. On being satisfied concerning the sufficiency of the confidentiality claims filed by the interested parties, the Authority has considered such information/submissions as confidential. In case of non-acceptance of confidentiality claims,

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<sup>1</sup> Refer Table B1 for list of cooperating producers/exporters from the subject countries.

- the interested parties were directed to submit the non-confidential version of the same and circulate it to the other interested parties.
- t. The Authority circulated the disclosure statement containing all essential facts under consideration for making final recommendations to the Central Government to all interested parties on 21<sup>st</sup> April 2023. The interested parties were directed to file their comments on the disclosure statement by 28<sup>th</sup> April 2023.
  - u. The Authority has examined all post – disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority have not been repeated for the sake of brevity.
  - v. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported with evidence and considered relevant to the present investigation.
  - w. ‘\*\*\*’ in these final findings represents information furnished by an interested party on confidential basis and so considered by the Authority under Rules 7 of AD Rules, 1995.
  - x. The exchange rate for the POI (January 2021 - December 2021) adopted by the Authority for the subject investigation is 1 US \$= Rs. 74.78.

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

4. The product under consideration (hereinafter also referred to as the “PUC”) as defined at the stage of initiation was as follows:

*“3. The product under consideration is "Dispersion Unshifted Single-mode Optical Fiber" ("SMOF") originating in or exported from China, Indonesia and South Korea. SMOF facilitates transmission of a single spatial mode of light as a carrier and is used for signal transmissions within certain bands. The product scope covers Dispersion Unshifted Fiber (G.652) as well as Bend insensitive single mode Fiber (G.657) - as defined by International Telecommunication Union (ITU-T), which is a global standardization body for telecommunication systems and vendors. Dispersion shifted Fiber (G.653), Cut-off shifted single mode optical Fiber (G.654), and Non Zero Dispersion Shifted Fibers (G.655 & G.656) are specifically excluded from the scope of Product.*

4. The product under consideration is used for manufacture of Optical Fiber Cables, including Uni-tube and Multi tube stranded cables, tight buffer cables, Armoured and Unarmoured cables, ADSS & Fig-8 cables, Ribbon cables, Wet core and Dry core cables and others. Single-mode Optical Fiber is mainly applied to high-data rate, long distance and access network transportation, therefore, is mainly used in long-haul, metro area network, CATV, optical access network (for example FTTH) and even over short distance networks as applicable. Major consumption is driven by 3G/4G/5G rollout by Telco's, Connectivity of Gram Panchayat and Defence (NFS Project).

5. The PUC is being imported under Customs Tariff Heading 90011000 of the First Schedule to the Customs Tariff Act, 1975. However, it is possible that the subject goods may also be imported under other headings and therefore, the Customs tariff heading is indicative only and is not binding on scope of the product.”

### **C.1 Submissions made by the other interested parties**

5. The other interested parties have made the following submissions with respect to the product under consideration:
- a. There are negligible imports of G.657 fibers and the demand for G.657 fibers is also negligible. Therefore, G.657 fibers should be excluded from the scope of the PUC.<sup>2</sup>
  - b. The imports of G.652 fibers constitute the maximum share of the imports of the subject goods into India and all other kinds of optical fiber constitute an insignificant percentage of imports into India<sup>3</sup>.
  - c. G.652 fibers and G.657 fibers are not comparable in terms of price and therefore, G.657 fibers should be excluded from the scope of the investigation.<sup>4</sup>
  - d. The applicant has not provided details or bifurcation (grade wise) of their production, sales, exports, injury margin, dumping margin, price undercutting etc. of the PUC which is required to be examined by the Authority.<sup>5</sup>

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<sup>2</sup> Para 5 of HFCL's Written Submissions.

<sup>3</sup> Para 7 of HFCL's Written Submission.

<sup>4</sup> Para 9 of HFCL's Written Submissions.

<sup>5</sup> Para 11 of Fasten Group's Written Submissions.

- e. The scope of the products under subheading 9001 1000 is too broad and is not specific, which covers all categories of fiber optics and fiber optic cables.<sup>6</sup>

### **C.2 Submissions made on behalf of the domestic industry**

6. The following submissions have been made on behalf of the domestic industry with regard to the product under consideration:
  - a. The PUC is classified under customs tariff heading 9001 10 00 of the First Schedule to the Customs Tariff Act, 1975.<sup>7</sup>
  - b. The PUC is “dispersion unshifted single – mode optical fiber” and covers only non – dispersion shifted fiber (G.652) and bend-insensitive single – mode fiber (G.657) categories of optical fiber.<sup>8</sup>
  - c. The goods manufactured by the applicant (G.652 fibers and G.657 fibers) are like article to the subject imports. The applicant’s goods are comparable in terms of physical and chemical characteristics, manufacturing process and technology, function and uses, product specifications, distribution and marketing and tariff classification of the goods, and are technically and commercially substitutable with the subject goods. There are no known differences in the technology employed by the domestic industry and the producers in the subject countries.<sup>9</sup>
  - d. Corning India Technologies Ltd. primarily manufactures G.652, G.657 and a small volume of G.655 category of single – mode optical fiber.<sup>10</sup>
  - e. Dispersion – shifted fiber (G.653), cut-off shifted single mode optical fiber (G.654), and non – zero dispersion – shifted fibers (G.655 & G.656) can be specifically excluded from the scope of the PUC<sup>11</sup>.

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

7. The submissions made by the interested parties and the domestic industry with regard to the product under consideration have been examined and addressed hereunder:

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<sup>6</sup> Page 2 of Government of Indonesia’s Response.

<sup>7</sup> Para 6 of BFL’s Written Submissions.

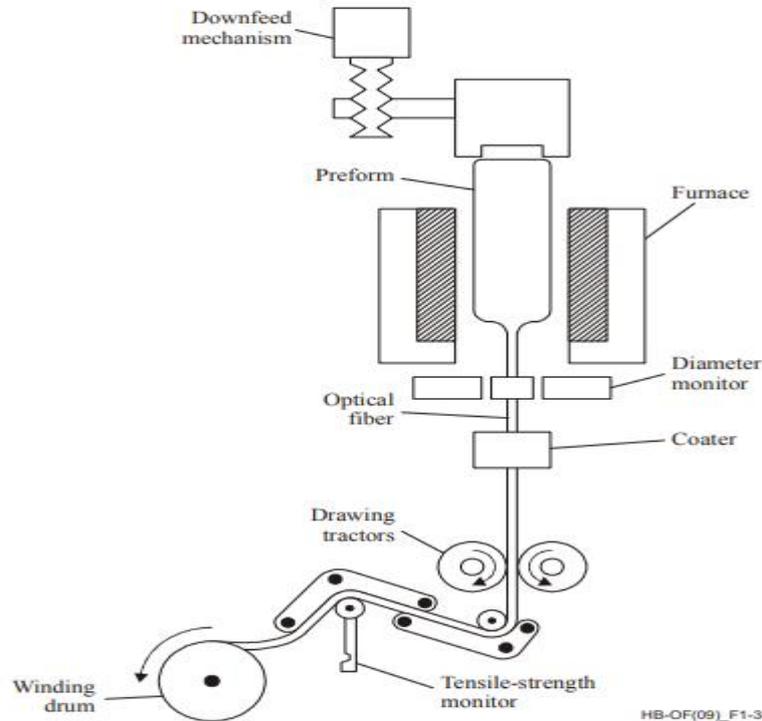
<sup>8</sup> Para 6 of BFL’s Written Submissions.

<sup>9</sup> Para 9 of BFL’s Written Submissions.

<sup>10</sup> Para 6 of Corning India’s Written Submissions.

<sup>11</sup> Para 8 of BFL’s Written Submissions.

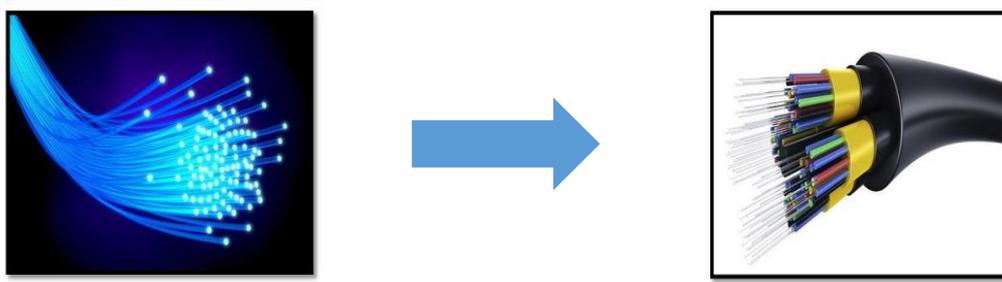
8. Optical fibers are used to transmit data in the form of light pulses. All optical fibers use a core of hair-like transparent silicon covered with less refractive indexed cladding to avoid light leakage to the surroundings. The standard process for drawing of optical fiber from preform is as below<sup>12</sup>:



*Figure 1 Optical fiber production process*

9. The primary raw material used in the manufacturing of optical fiber is preform which is a cylindrical form of optical glass made from silica, from which optical fiber is drawn in a fiber drawing tower. In a drawing tower, preform is fed into a furnace in controlled manner, where it is heated to a temperature of about 2000° C. The melted preform is drawn into a fiber by using a precision-feed mechanism. The fiber diameter is monitored optically by dedicated measurement equipment. The fiber diameter can be kept constant to within 0.1%. A polymer coating is applied to the fiber during the drawing step. The coating provides mechanical protection as well as preserves the transmission properties of the fiber. The diameter of the coated fiber is typically 245  $\mu\text{m}$ , although it can be as large as 900  $\mu\text{m}$  when multiple coatings are applied.
10. Optical fibers are bundled together to make optical fiber cables, which are used to transfer digital data signals in the form of light up to distances of hundreds of miles, with higher throughput rates than those achievable via electrical communication cables. The following figure shows optical fiber and optical fiber cables:

<sup>12</sup> [https://www.itu.int/dms\\_pub/itu-t/opb/hdb/T-HDB-OUT.10-2009-1-PDF-E.pdf](https://www.itu.int/dms_pub/itu-t/opb/hdb/T-HDB-OUT.10-2009-1-PDF-E.pdf)



*Figure 2 Optical and Optical fiber cables*

11. Optical fibers can be of multiple types such as single – mode optical fiber (“SMOF”) or multi – mode optical fiber. Single – mode optical fibers use a single transmission mode and the light signals are propagated along the stretched medium without dispersion. Due to zero dispersion characteristics, they are used for establishing communication over long distances. Multi – mode optical fibers are designed to propagate multiple light signals simultaneously. They are primarily used to establish communication over short distances.
12. Single – mode optical fibers can be of several types. The International Telecommunication Union (ITU – T) which established standards for optical fibers has divided single – mode optical fibers into the following categories:
  - a. G.652: Single mode optical fiber.
  - b. G.653: Dispersion – shifted SMOF.
  - c. G.654: Cut-off shifted SMOF.
  - d. G.655: Non – zero dispersion-shifted SMOF.
  - e. G.656: Non – zero dispersion SMOF.
  - f. G.657: Bending loss insensitive SMOF.
13. The product under consideration for the present investigation is “Dispersion Un-shifted Single – Mode Optical Fiber”, which covers SMOF (G.652) as well as bending – loss insensitive SMOF (G.657). Dispersion shifted SMOF (G.653), cut-off shifted SMOF (G.654), and non – zero dispersion SMOF (G.655 and G.656) are excluded from the scope of the PUC.
14. The other interested parties and the domestic industry have raised the following issues:
  - a. Exclusion of G. 657 grade of optical fiber from the scope of the PUC on ground of low demand and price incomparability.
15. Additionally, the Authority has examined the following points:
  - b. Whether the goods manufactured by the domestic industry are like article to the subject goods imported from the subject countries?

c. What is the scope of the PUC?

**i. Exclusion of G. 657 grade from the scope of the PUC**

16. HFCL has sought the exclusion of G. 657 grade of the PUC on the ground of its negligible demand in India and low import volumes. It is noted that the applicant as well as the supporter are producing G.657 grade of the PUC. While the import volume, as well as the demand of G.657 fibers, are low in comparison to G.652 fibers, the same cannot be a ground for the exclusion of G.657 grade. The applicant has sold G.657 fibers in commercial quantities i.e., around \*\*\* KFKM in the POI. The applicant has submitted that the demand for G.657 fibers is around \*\*\* % of total demand of the PUC in India which considering the total demand of the PUC in the POI is around \*\*\* KFKM. On the basis of the sales made by the applicant, it is noted that the applicant has sold commercial volumes of the PUC in the domestic market. While the G. 652 fibers are usually used to transmit data over long distances such as between two cities, the G.657 fibers are used in providing the last mile connectivity<sup>13</sup> i.e., inside the buildings because of their ability to retain transmissions even in a bent state. In essence, G.657 grade is used along with G.652 grade fibers to transmit information. Given the fact that G.657 fibers are used to provide last-mile connectivity, it is understood that the consumption of the same would be low in comparison to G.652 fibers.
17. HFCL has also sought exclusion of the G.657 grade on the ground of its incomparable prices with G.652 grade of the PUC. As noted above, the applicant as well as the supporter manufacture G.657 grade of the PUC. Mere price difference cannot be a ground for the exclusion of a product from the scope of the PUC. It is further noted that neither HFCL nor any other interested parties had proposed PCNs for separate examination of G.657 and G.652 grades of the PUC.

**ii. Product under consideration and like article**

18. The applicant and the supporter have claimed that the article manufactured by them and the subject goods imported from the subject countries are comparable in terms of physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using

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<sup>13</sup> The last mile or last kilometer is a phrase widely used in the telecommunications, cable television and internet industries to refer to the final leg of the telecommunications networks that deliver telecommunication services to retail end-users (customers). More specifically, the last mile describes the portion of the telecommunications network chain that physically reaches the end-user's premises.

the two interchangeably. None of the other interested parties has raised objections with respect to the goods manufactured by the domestic industry not being a 'like article' to the subject goods. The Authority, therefore, holds that the goods produced by the domestic industry are 'like article' to the subject goods imported from the subject countries in terms of Rule 2(d) of the AD Rules, 1995.

### **iii. Scope of the PUC**

19. Government of Indonesia has submitted that the scope of the PUC in the present investigation is too wide and covers all kinds of optical fibers and optical fiber cables. It is clarified that only two types of optical fibers are covered within the scope of the PUC i.e., G.652 and G. 657. Other categories of optical fiber have not been included within the scope of the PUC. It is further clarified that optical fiber cables have not been covered within the scope of the PUC. In view of the above, the Authority confirms the scope of the PUC as defined at the stage of initiation.

### **C.4 Post – Disclosure Comments**

20. No contesting submissions were made by any of the interesting parties and therefore, the Authority has not examined the same.

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

### **D.1 Submissions made by the other interested parties**

21. The following submissions have been made by the other interested parties with regard to the scope of the domestic industry and its standing:
- a. The application was not supported by other non – importing domestic producers at the stage of initiation and therefore, the percentage of domestic producers supporting the application was less than 50 % as required under Rule 5(3) of the AD Rules, 1995.<sup>14</sup>
  - b. The related parties of the applicant have made imports of the PUC during the POI.<sup>15</sup> The Authority must verify and take evidence on record whether the applicant's related party Birla Cables Limited has made minuscule imports of the PUC as

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<sup>14</sup> Para 13 of Fasten Group's Written Submissions.

<sup>15</sup> Para 14 of Fasten Group's Written Submissions.

claimed by the applicant under advance authorization during the POI.<sup>16</sup> Further, the applicant has claimed the quantum of imports made by Birla Cables Limited as confidential which is preventing the other interested parties from verifying such claims.

- c. The applicant's claim that it is not related to Birla Cable Limited should be rejected by the Authority<sup>17</sup>. According to the definition of "control"<sup>18</sup> and "related party"<sup>19</sup> under Companies Act, 2013, control can be exercised not only by virtue of shareholding but it can be exercised by any person who controls the management or policy decisions directly or indirectly, by virtue of management rights or in any other manner.<sup>20</sup>
- d. The applicant is related to Birla Cable Limited through common directors and are therefore directly or indirectly controlled by third persons.<sup>21</sup>
- e. Vindhya Telelinks Ltd. And Universal Cables Ltd. are related parties of the applicant<sup>22</sup> and may have imported the subject goods from the subject countries.<sup>23</sup>
- f. The Authority has in several previous investigations<sup>24</sup> excluded domestic producers from the scope of the domestic industry on account of imports made by their related

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<sup>16</sup> Para 16 of Fasten Group's Written Submissions; Para 24 of Fasten Group's Rejoinder Submissions.

<sup>17</sup> Para 20 of Fasten Group's Rejoinder Submissions.

<sup>18</sup> S.2(27) of the Companies Act, 2013 defines control as: "control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."

<sup>19</sup> S. 2(76) of the Companies Act, 2013 defines related party as: "(76) —related party||, with reference to a company, means— (i) a director or his relative; (ii) a key managerial personnel or his relative; (iii) a firm, in which a director, manager or his relative is a partner; (iv) a private company in which a director or manager is a member or director; (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital; (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity; (viii) any company which is— (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary; (ix) such other person as may be prescribed".

<sup>20</sup> Para 23 of Fasten Group's Rejoinder Submissions.

<sup>21</sup> Paras 22 of Fasten Group's Rejoinder Submissions; Para 23 of HFCL's Written Submissions.

<sup>22</sup> Para 17 of Fasten Group's Written Submissions.

<sup>23</sup> Paras 24 – 28 of Fasten Group's Rejoinder Submissions.

<sup>24</sup> Final Findings in anti-dumping investigation concerning imports of "Acrylic Fiber" originating in or exported from Belarus, European Union, Peru and Ukraine, Final Findings dated 1st September 2020, Case No. (OI) 18/2019 ; Final Findings in the Anti-dumping duty investigation against imports of "Aluminium Foil" originating in or exported from China PR, Final Findings dated 10th March, 2017, Case No. 14/06/2015-DGAD ; Anti-Dumping Investigation concerning imports of Pentaerythritol originating in or exported from China PR and Sweden. Case No.14/16/2004-DGAD, Final Findings dated 2nd February, 2006;

parties.<sup>25</sup>

- g. The applicant and the supporter i.e., Sterlite India Technologies Ltd. have imported the PUC in significant quantities and therefore, the injury to the domestic producer is self – inflicted.<sup>26</sup>
- h. Sterlite India Technologies Ltd. cannot be considered a supporter in the present investigation as it has acted as an importer.<sup>27</sup> Sterlite Limited India has made 26 – 86 % of the subject imports from China PR during the injury period and 30 %<sup>28</sup> during the POI.<sup>29</sup>
- i. Sterlite India Technologies Ltd. should not be considered as part of the domestic industry as the applicant has itself argued for its exclusion from the scope of the domestic industry.<sup>30</sup>
- j. The applicant has not provided any evidence that Sterlite India Technologies Ltd. has made imports under advance authorisation scheme.<sup>31</sup>

## **D.2 Submissions made on behalf of the domestic industry**

- 22. The following submissions have been made by the applicant with regard to the scope of the domestic industry and its standing:
  - a. The present anti – dumping application has been filed by Birla Furukawa Fiber Optics Ltd. (applicant) and has been supported by Sterlite India Technologies Ltd. and Corning India Technologies Ltd<sup>32</sup>. The three producers cumulatively account for more than ninety per cent of the total Indian production of the PUC.<sup>33</sup>
  - b. The information pertaining to Indian producers of the PUC is not available in public

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<sup>25</sup> Para 19 of Fasten Group's Written Submissions.

<sup>26</sup> Para 15 of Fasten Group's Written Submissions.

<sup>27</sup> Para 22 of Fasten Group's Written Submissions; Para 4 of Futong's Written Submissions; Para 1 of Futong's Rejoinder Submissions. (It is clarified here that the Consultants representing Futong in this investigation are also representing the China Chamber of Commerce for Import & Export of Machinery & Electronic Products. The China Chamber of Commerce for Import & Export of Machinery & Electronic Products has made similar submissions as that of Futong. Therefore, for the sake of brevity, the name of China Chamber of Commerce for Import & Export of Machinery & Electronic Products has not been repeated in the footnotes.)

<sup>28</sup> As per page 25 of NCV application.

<sup>29</sup> Para 6, 14, 20, 21 and 22 of Fasten Group's Written Submissions; Para 16 of Fastens Group's Rejoinder Submissions.

<sup>30</sup> Para 14 of Fastens Group's Written Submissions.

<sup>31</sup> Para 41 of Fasten Group's Rejoinder Submissions.

<sup>32</sup> Para 10 of Corning India's Written Submissions.

<sup>33</sup> Para 11 of BFL's Written Submissions.

domain. As per the information available in CRU International Ltd.'s<sup>34</sup> (hereinafter referred to as CRU) Report on Indian production data, the following producers manufacture the PUC in India.

<b>Indian Producers during POI</b>	<b>Status</b>	<b>Whether imported subject goods during the POI</b>	<b>Whether eligible as domestic producer<sup>35</sup></b>
Birla Furukawa Fiber Optics Ltd.	Applicant	No	Yes
Corning India Technologies Ltd.	Supporter	No	Yes
Sterlite India Technologies Ltd.	Supporter	Yes	No
ZTT	Neutral	Yes	No
Aksh Optifiber Limited	Neutral	No	Yes
Finolex Technologies	Neutral	No	Yes

*Table D 1*

- c. The applicant accounts for the major share (\*\*\*) of the total eligible domestic production of the like article in India.<sup>36</sup> The applicant and Corning India Technologies Ltd. together account of 90 – 95 % of the total Indian eligible domestic production.<sup>37</sup>
- d. With respect to non – fulfilment of the “fifty per cent of total production” condition laid down in Rule 5 (3) of the AD Rules, 1995, it is submitted that the other interested party has forwarded an erroneous interpretation of law. In the present investigation, none of other producers of the like article have opposed the application and therefore, it can be concluded that 100 % of the domestic producers, who have expressed “either support or opposition”, have supported the application.<sup>38</sup>
- e. With respect to the requirement of 50 % of support of the domestic producers at the time of initiation, it is submitted that the Authority has consistently in several past investigations<sup>39</sup> considered the production of the supporting producers even when such support has been filed post-initiation of the investigations<sup>40</sup>.

<sup>34</sup> Para 12 of BFL’s Written Submissions.

<sup>35</sup> Para 12 of BFL’s Written Submissions.

<sup>36</sup> Para 13 of BFL’s Written Submissions.

<sup>37</sup> Para 13 of BFL’s Written Submissions; Para 9 of Corning India’s Rejoinder Submissions.

<sup>38</sup> Para 23 of BFL’s Written Submissions.

<sup>39</sup> Para 7 of Corning India’s Rejoinder Submissions

<sup>40</sup> Anti-dumping investigation concerning imports of Viscose Filament yarn originating in or exported from China PR and Ukraine. Final Findings. - No. 14/23/2004-DGAD. Anti-dumping investigation on import of PVC Suspension Resin from European Union (EU) and Mexico – Final findings - No.14/1012/2012-DGAD - Sunset review of anti-dumping investigation concerning imports of “Glazed/Unglazed Porcelain/Vitrified Tiles in polished or unpolished

- f. The applicant has never imported the subject goods. However, one of its group companies i.e., Birla Cable Limited<sup>41</sup> has imported a total of \*\*\* KFKM of the subject goods from two of the subject countries<sup>42</sup> during the POI under advance authorisation scheme. The imports made by Birla Cable Limited are \*\*\* % of the total imports from the subject countries and represents less than \*\*\* % of the total Indian demand.<sup>43</sup>
- g. The applicant has also furnished copies of all bills of entry vide which the said imports were made by Birla Cable Limited, which clearly show that the same have been made against advance authorisation.
- h. The applicant company is a joint venture between the Birla Group and Furukawa Electric Co. Ltd., Japan in which Furukawa holds \*\*\*% of the equity shareholding in the applicant.<sup>44</sup> The applicant has 6 Directors, 3 each from the Birla Group and Furukawa Electric Co.<sup>45</sup>
- i. Birla Cables Limited and the applicant are separate legal entities and do not exercise any kind of control over each other and are not related parties either under the Companies Act, the Income Tax Act and Rule 2(b) of the AD Rules, 1995. The applicant company does not have equity stake in Birla Cables Limited nor does Birla Cables Limited has any equity stake in BFL.<sup>46</sup>
- j. Birla Cables Limited and the applicant have common shareholders which accounts for \*\*\* % of the applicant's shareholding and \*\*\* % of Birla Cables Limited's shareholding. However, the majority shareholding of the applicant i.e., \*\*\* % of the shareholding rests with independent parties of which the majority part rests with Furukawa Electric Co., Japan.<sup>47</sup>
- k. Birla Cables Limited has made imports under specific export contracts, against advance authorization. The judgement of Hon'ble High Court of Calcutta in *Gujarat Fertilisers & Chemicals Ltd. v. Additional Secretary and Designated Authority*<sup>48</sup> that the term "importer" for exclusion from the definition of the domestic industry under Rule 2(b) of AD Rules, 1995 means a person who is carrying on the business of import exclusively for trading purpose. Further, the

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finish with less than 37% water absorption' originating in or exported from China PR - 8. No.7/39/2020-DGTR.

<sup>41</sup> Birla Cable Limited

<sup>42</sup> BCL has imported from China PR and Korea RP.

<sup>43</sup> Para 15 of BFL's Written Submissions.

<sup>44</sup> Para 17 of BFL's Written Submissions.

<sup>45</sup> Para 18 of BFL's Written Submissions.

<sup>46</sup> Para 18 of BFL's Written Submissions.

<sup>47</sup> Para 18 of BFL's written submissions.

<sup>48</sup> 2012 (286) E.L.T. 348 (Cal.).

Authority in the sunset review investigation of ‘2 Methyl (5) Nitro Imidazole’<sup>49</sup> has held that imports made under duty exemption schemes would not disqualify a domestic producer from being considered as domestic industry.<sup>50</sup>

- l. The applicant is a committed producer of the subject goods in India and the minuscule imports made by Birla Cables Limited under duty exemption schemes should not change the status of the applicant from being a domestic producer of the subject goods to an importer.<sup>51</sup>
- m. Corning India Technologies Ltd. has not imported the subject goods from the subject countries<sup>52</sup>.
- n. Sterlite India Technologies Ltd. has imported substantial quantity of the PUC from China PR and therefore, it may be treated as ineligible producer.<sup>53</sup> The Authority had clarified the same in the initiation notification.<sup>54</sup>
- o. Sterlite India Technologies Ltd. has also submitted all the bills of entry filed during the POI for importing the subject goods, to substantiate its claim that the said imports have been made against advance authorization.
- p. With respect to arguments pertaining to rejection of Sterlite India Technologies Ltd. as a supporter to the investigation, it is submitted that the Rule 2(b) lays down the definition of domestic industry and should not be applied to determine the eligibility of a supporter.<sup>55</sup>
- q. Sterlite India Technologies Ltd.’s data has not been relied upon for claiming standing or injury assessment and therefore, the filing of Sterlite India Technologies Ltd.’s data is inconsequential for the present application.<sup>56</sup>

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

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<sup>49</sup> Para 11, Final Findings in Anti-dumping investigation (Sunset Review) involving import of 2 Methyl (5) Nitro Imidazole - originating in or exported from China PR dated 29<sup>th</sup> June 2007 available at: [https://www.dgtr.gov.in/sites/default/files/adfin\\_2MNI\\_ssr\\_0.pdf](https://www.dgtr.gov.in/sites/default/files/adfin_2MNI_ssr_0.pdf).

“11. In this regard, the Authority notes that M/s Aarti Drugs Ltd., Mumbai had imported subject goods under duty exemption scheme which constitute approximately 32% of the total imports of India. The goods imported under duty exemption scheme necessarily need to be exported after use of imported inputs in the final product and its price impact may be insignificant in the merchant market. The Authority, therefore, holds that the imports made under duty exemption scheme would not disqualify the producer from being considered as domestic industry.”

<sup>50</sup> Para 20 of BFL’s Written Submissions.

<sup>51</sup> Para 19 of BFL’s Written Submissions.

<sup>52</sup> Para 14 of Corning India’s Written Submissions.

<sup>53</sup> Para 14 of BFL’s Rejoinder Submissions.

<sup>54</sup> Para 26 of BFL’s Rejoinder Submissions.

<sup>55</sup> Paras 12 and 13 of Corning India’s Written Submissions.

<sup>56</sup> Para 14 of BFL’s Rejoinder Submissions.

23. The submissions made by the other interested parties and the domestic industry with regard to the product under consideration have been examined and addressed hereunder:
24. The following issues have been raised by the other interested parties and the domestic industry with respect to the domestic industry's standing:
- a. Whether in view of the imports made by related parties of the applicant, the applicant constitutes domestic industry in terms of Rule 2(b)?
  - b. Whether Sterlite India Technologies Ltd. (hereinafter referred to as "Sterlite India") can be considered a supporter for the purpose of the present investigation?
  - c. Whether the requirements under Rule 5 (3) of the AD Rules, 1995 have been fulfilled by the applicant?

**i. Whether applicant constitutes domestic industry under Rule 2(b) of the AD Rules, 1995?**

25. Rule 2(b) of the AD Rules, 1995 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**".*

26. Fasten Group and HFCL have argued that the applicant does not constitute domestic industry as one of its related entities, Birla Cable Limited (hereinafter referred to as "BCL"), has imported the subject goods from China PR, one of the subject countries during the POI. They have also argued that BCL is a related company of the applicant as they have common directors. Fasten Group has relied on this Authority's final findings in *Acrylic Fiber*<sup>57</sup>, *Aluminum Foil*<sup>58</sup> and *Pentaerythritol*<sup>59</sup> for exclusion of the applicant from the scope of the domestic industry. It has further relied upon the definition of control and related party under Companies Act, 2013 to reject the applicant's claim that BCL is not its related

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<sup>57</sup> See *supra* note 24.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

company.

27. With respect to the same, the applicant has contended that the applicant and BCL are separate legal entities and are not related parties either under the Companies Act, 2013 or Rule 2(b) of the AD Rules, 1995. The applicant has further submitted that the two companies have common shareholders accounting for 38% of the applicant's shareholding. However, the majority shareholding rests with Furukawa Electric Co., Japan, an independent party. Additionally, the applicant has submitted that BCL has made imports under the advance authorization scheme, which accounts for \*\*\* % of total imports of the subject goods from the subject countries and less than \*\*\* % of the Indian demand of the subject goods. The applicant has further relied on the judgement of High Court of Calcutta in *Gujarat Fertilisers & Chemicals Ltd. v. Additional Secretary and Designated Authority*<sup>60</sup> and this Authority's final findings in *2 Methyl (5) Nitro Imidazole*<sup>61</sup> for considering the applicant as an eligible domestic producer under Rule 2(b) of the AD Rules, 1995.
28. Rule 2(b) of the AD Rules, 1995 lays down that in situations wherein a domestic producer or its related party has made imports of the subject goods from the subject countries, the Authority may not consider such a producer as an eligible domestic producer.
29. In the present investigation, the Authority notes that even though BCL does not directly hold any shareholding in the applicant company, they have common shareholders. The Authority, therefore, considers Birla Cables Limited as a related party of the applicant.
30. However, not every act of import of subject goods by a domestic producer or its related entity can lead to exclusion of such domestic producer from the ambit of domestic industry. The Gauhati High Court in the decision of *Century Plyboards v. Union of India*<sup>62</sup> has also observed that the Authority enjoys certain discretion with respect to inclusion/exclusion of such importing domestic producers<sup>63</sup>. In this regard, the decision of Calcutta High Court in *Gujarat Fertilisers & Chemicals Ltd. v. Additional Secretary and Designated Authority*<sup>64</sup> assumes importance wherein the Hon'ble High Court had observed that the ultimate test

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<sup>60</sup> 2012 (286) E.L.T. 348 (Cal.).

<sup>61</sup> See *supra* note 49.

<sup>62</sup> 2022 SCC OnLine Gau 643.

<sup>63</sup> "54. In view of the above, it is the considered view of the Court that the amendment brought in to the definition of 'domestic industry' by the notification dated 01.12.2011 in Rule 2(b) of the ADR 1995 do bring in a discretion upon the authorities to include the producers related to the exporters or importers of the dumped article or the importers themselves in the concept of 'domestic industry'. But again because of the nature and implications of the successive amendments, we have to understand that such discretion may not be an absolute discretion but would be a circumstantial discretion to be determined on case-to-case basis."

<sup>64</sup> See *supra* note 60.

for exclusion/inclusion of an importing domestic producer from/within the scope of the domestic industry, was to ascertain the nature of such producer.

31. The imports made by BCL accounts for \*\*\*% of total imports of the subject goods from the subject countries and less than \*\*\* % of the demand of the subject goods in India during the POI. It is further noted that BCL is engaged in the manufacturing of optical fiber cables whereas the applicant is engaged in the production of the like article. Therefore, the quantum of imports made by the BCL does not have any impact on the nature of the applicant as an eligible domestic producer.
32. Vindhya Telelinks Ltd. and Universal Cables Ltd. are also related parties of the applicant. However, they have not indulged in importation of the subject goods from the subject countries during the POI. In view of the above, the Authority holds the applicant as an eligible domestic producer under Rule 2(b) of the AD Rules, 1995.

**ii. Whether Sterlite India can be considered as a supporter in the present investigation?**

33. Fasten Group, Futong and HFCL have argued that Sterlite India cannot be considered as a supporter to the present anti-dumping application as it has imported substantial quantities of the subject goods from its related entity in China PR, one of the subject countries. Corning India Technologies Ltd. (hereinafter referred to as “Corning India”) has argued that the requirements of Rule 2(b) of the AD Rules, 1995 cannot be applied to determine whether an importer can be considered as supporter. The applicant has submitted that given the large quantum of imports made by Sterlite India, the same may not be considered as a supporter to the present investigation.
34. While Rule 2(b) of AD Rules, 1995 does not lay down the criteria for the determination of a supporter, it is noted that the same serves as guidance in determining the nature of a supporter. The Authority cannot allow unbridled participation of every importing domestic producer in support of anti – dumping applications as it would be antithetical to the principles of AD Rules, 1995. The eligibility of a supporter, therefore, is to be decided on a case – to – case basis, just as it is determined for domestic producers. As per the facts of the present investigation, Sterlite India has imported significant quantities of subject goods from one of the subject countries through the injury period including the POI. These imports constitute considerable share of the demand of the subject goods in India. Therefore, the Authority has not considered Sterlite India as a supporter to the present anti – dumping application.

35. Sterlite India has made imports of the subject goods not only from its related party in China PR but also from other exporters from China PR. It has imported 2521 FKM of the subject goods from China PR. The Authority had at the stage of initiation itself, considered Sterlite India as an ineligible domestic producer due to the huge quantum of imports of subject goods. Further, the applicant has also argued for exclusion of Sterlite India from the ambit of eligible domestic producers. The Authority, therefore, in accordance with the initiation notification, has not considered Sterlite India as an ineligible domestic producer. Accordingly, the Authority has not considered Sterlite India as a supporter to the anti – dumping application.

**iii. Fulfilment of requirements under Rule 5(3) of the AD Rules, 1995.**

36. Fasten Group has alleged that the application has failed to fulfil the 50 % requirement envisaged in Rule 5(3) of the AD Rules, 1995 because non – importing domestic producers of the like article did not support the application at the initiation stage. With respect to the same, the applicant has submitted that none of the domestic producers opposed its application and therefore, it can be concluded that 100 % of the domestic producers have supported its application.

37. Rule 5(3) (a) of the AD Rules, 1995 lays down the following:

*“(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless –  
 (a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:  
 Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like article by the domestic industry, and*

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 .  
 .  
 Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.”*

38. As noted above, Rule 5(3) (a) read with explanation postulates a two – fold requirement:
- The applicant (s) must represent twenty-five percent of the total production of the like article in India; and
  - The application must be supported by domestic producers representing at least 50 % of such producers who have either expressed their support or opposition to the application.
39. The following table enumerates the production figures of the domestic producers of the like article as considered at the stage of initiation:

<b>Domestic producer</b>	<b>Production during POI (KFKM)</b>	<b>Production of Eligible Indian producers</b>	<b>Share of applicant in eligible domestic production</b>
Birla Furukawa Fiber Optics Pvt. Ltd.*	***	***	
Corning India Technologies Ltd.	***	***	
Sterlite India Technologies Ltd.	***	Importer	
ZTT	***	Importer	
Aksh Optifiber Limited	***	***	
Finolex Technologies	***	***	
<b>Total</b>	***	***	<b>34%</b>

*Table D 2*

40. It is seen that the applicant’s share in total domestic production was more than 25% of the eligible domestic production. Thus, the first limb of the requirement laid down in Rule 5 (3) (a) is fulfilled.
41. With respect to the second condition, it is noted that the volume of only such domestic producers is to be taken into account who have either expressed support or opposition to the application. As none of the other eligible producers has expressed opposition to the application at the stage of initiation, it can be concluded that the application was supported by 100 % of the domestic producers who have either “expressed support or opposition” to the application. Thus, the requirement of the second limb of Rule 5 (3) of the AD Rules, 1995 was also fulfilled. It is also noted that subsequently, the application has also been supported by Corning India.

42. The applicant has submitted that it does not have access to the production data of other domestic manufacturers. The applicant has further submitted that other than Sterlite India, none of the other Indian producers has preform (the primary raw material used in the production of the subject goods) manufacturing facility in India and therefore all domestic manufacturers, other than Sterlite India, produce the PUC from imported preform (which cannot be used for any other known purpose). Accordingly, an estimate of total industry production has been made by them adopting the standard industry norm that 1 kg of preform will yield around 33.3 FKM of optical fiber. Accordingly, in the absence of the actual production figures of Aksh Optifiber and Finolex Technologies, the total Indian production has been corroborated with the derived production based on the preform imports of the Indian producers of SMOF:

Indian Manufacturers	POI		Eligible Production
	Preform ('000 Kg)	Derived SMOF (KFKM)	Preform imports (KFKM)
Aksh Optifibre	***	***	***
Birla Furukawa Limited	***	***	***#
Corning India	***	***	***#
Finolex Technologies	***	***	***
HFCI Ltd.	***	***	##
Sterlite India	-	-	##
ZTT	***	***	##
<b>Grand Total</b>	***	***	***
	Applicant's Share		27%

Table D 3

*#Actual*

*##Importers- ineligible producers*

43. It is seen that applicant constitutes more than 25 % of the total eligible domestic production. It is also to be noted that Corning India has supported the anti – dumping application by the applicant and after considering the same, the application has support of 90% of eligible domestic producers in India. Accordingly, the Authority holds that the applicant constitutes domestic industry within the meaning of Rule 2(b) of the AD Rules, 1995 and considers that the application satisfies the criteria of standing in terms of Rule 5(3) of the

AD Rules, 1995.

#### **D.4 Post – disclosure comments by other interested parties**

44. The other interested parties have made the following submissions with respect to the scope and standing of the domestic industry:
- a. The Authority has failed to address the argument that domestic producers whose related producers are importers should be excluded from the scope of the domestic industry. Such exclusion is necessary to accurately assess the injury caused to the domestic industry and to ensure that imposition of anti – dumping duties would not accrue any undue benefits to the related producer.<sup>65</sup>
  - b. Due to confidentiality of the information concerning determination of standing of the domestic industry, the interested parties cannot offer their comments on the same.<sup>66</sup>

#### **D.5 Post – disclosure comments by the domestic industry**

45. The domestic industry has made the following submissions with respect to the scope and standing of the domestic industry:
- a. Sterlite India cannot be excluded from scope of the domestic industry on the basis of Rule 2(b) of AD Rules, 1995 in the absence of any jurisprudence providing for recognition of an entity as a ‘supporter’. Sterlite India has imported 2,692 FKM of the subject goods during the POI which constitutes around 8 – 9% of the total Indian demand.<sup>67</sup>
  - b. Sterlite India has produced 35,220 FKM of the ‘like article’ during the POI and is thus, the biggest manufacturer of the subject goods in India. Accordingly, Sterlite India should have been considered as a supporter in the present investigation.<sup>68</sup>

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<sup>65</sup> Paras 11 – 13 of Fasten Group’s Post – Disclosure Comments.

<sup>66</sup> Para 15 of Fasten Group’s Post – Disclosure Comments.

<sup>67</sup> Paras 2 – 3 of BFL’s Post – Disclosure Comments.

<sup>68</sup> Para 4 of BFL’s Post – Disclosure Comments.

- c. BCL has no direct or indirect control over the applicant nor does the applicant exercise such control. Mere common shareholding cannot be held as indicative of the fact that the two companies are related parties.<sup>69</sup>

#### **D.6 Examination by the Authority**

46. Fasten Group has alleged that non – exclusion of domestic producers whose related parties have made imports of the subject goods from the subject countries would lead to an inaccurate picture of injury analysis. As mentioned above, BCL one of the related parties of the applicant has made imports equivalent to \*\*\* % of total demand in India. Such imports constitute an insignificant portion of the Indian demand. Further, as stated above in paragraph 30, as per the decision of the Calcutta High Court in *Gujarat Fertilisers & Chemicals Ltd. v. Additional Secretary and Designated Authority*<sup>70</sup> the ultimate test for exclusion/inclusion of an importing domestic producer from/within the scope of the domestic industry, was to ascertain the nature of such producer. In the factual matrix of the present case, even though a related party of the applicant has imported the subject goods, the applicant continues to remain a manufacturer. Therefore, the Authority confirms the applicant as an eligible domestic producer under Rule 2(b) of the AD Rules, 1995.
47. Fasten Group has also alleged that due to confidentiality regarding the information on the basis of which the domestic industry’s standing has been determined, the interested parties are not able to offer their comments. The Authority has clarified the basis on which standing of the domestic industry has been determined. However, the disclosure of the exact volume of preform imports would lead to the disclosure of the quantum of production of the individual manufacturers as the conversion factor of preform to optical fiber is known. Production figures of individual manufacturers, whether domestic or foreign, is considered as confidential data. Therefore, such information cannot be disclosed.
48. The applicant has contended Sterlite India should have been considered as a supporter to the investigation and that the Authority should not rely on the definition provided under Rule 2 (b) of the AD Rules, 1995 to disregard it. It has further submitted that Sterlite India has made only \*\*\* % of the total demand in India and it has produced \*\*\* FKM in the POI which makes Sterlite India, the largest producer in India. In this regard, it is noted that Sterlite India has imported significant quantities of the PUC throughout the injury period. Its share in imports from the subject countries constituted around \*\*\* % in the base year, \*\*\* % in 2019 -20, \*\*\* % in 2020 – 2021 and \*\*\* % in the POI. Further, such imports have not

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<sup>69</sup> Para 6 of BFL’s Post – Disclosure Comments.

<sup>70</sup> See *supra* note 60.

been necessitated by a demand supply gap in India but rather have been imported from related as well as non – related parties for captive consumption and manufacturing of optical fiber cables. Therefore, Sterlite India cannot be considered a supporter in the present investigation.

49. The applicant has contested the Authority's determination of Birla Cable Limited as a related party of the applicant. In this regard, it is noted that the MP Birla Group holds \*\*\* % share in Birla Cable Limited and \*\*\* % of the shareholding in the applicant. These two entities have a common chairman who is also on the board of the MP Birla Group is in a decisive position to exert control over the affairs of both the entities. This clearly establishes that the two entities are related to each other. Accordingly, the applicant's claim has not been accepted.

## **E. Confidentiality**

### **E.1 Submissions made by the other interested parties**

50. The following submissions have been made by the other interested parties with regard to confidentiality:
- a. As per the Supreme Court's judgement in *Sterlite Industries (India) Ltd. v. Designated Authority*<sup>71</sup>, the Designated Authority cannot automatically assume confidentiality under Rule 7 of the AD Rules, 1995.<sup>72</sup>
  - b. The non – confidential information provided by the domestic industry is grossly deficient as the information provided by Sterlite India is not in conformity with Trade Notice No. 13/2018. In the event of any special dispensation or concession made in this case, it is requested that the Authority may clarify the reasons for doing so.<sup>73</sup>
  - c. The non – confidential version of the application does not contain an authorization letter issued by the applicant in favour of M/s TLC Legal. The application also does not contain Format X (certificate by Chief Executive of the Company/ Directors/Partners or proprietor of the firm) and Format Y (declaration by

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<sup>71</sup> (2006) 10 SCC 386.

<sup>72</sup> Para 25 of Fasten Group's Written Submissions.

<sup>73</sup> Para 4 of Futong's Written Submissions; Para 1 of Futong's Rejoinder Submissions.

authorised legal representative) as per Trade Notice 05/2021<sup>74</sup>.

- d. The applicant has claimed excessive confidentiality in relation to Section – VI (costing information) without giving any justifiable reasons and the application does not conform with Trade Notice No. 01/2013.<sup>75</sup>
- e. The applicant has claimed excessive confidentiality with respect to information pertaining to annual accounts and balance sheets of the applicant. As per para (viii) 76 of Trade Notice No. 01/2013, under no circumstances, a party can claim confidentiality on annual accounts and balance sheets if such information is either already in the public domain or can be accessed upon payment of fees. As the public account and balance sheets are available in the public domain, the same cannot be claimed confidential under any circumstance.<sup>77</sup>
- f. As per para 4 (iv)<sup>78</sup> of Trade Notice 01/2013, the applicant cannot claim the Cybex/CRU data which has been used to determine demand, as confidential given the fact that the same is available in the public domain. The CRU Report cannot be claimed confidential without sufficient justification<sup>79</sup>.
- g. The WTO panel in EU – Footwear (China) had held that EU authorities had violated Art. 6.5.1 of the WTO Agreement on Anti – dumping as it had failed to ensure that its producers supplied an adequate non – confidential summary of the claims or provided a cause statement explaining why summarization was not possible<sup>80</sup>.
- h. The applicant has not disclosed its production percentage, total Indian production, market share and details of quantities of imports by related parties in the non – confidential version of its application.<sup>81</sup>

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<sup>74</sup> Para 3 of Futong’s Written Submissions.

<sup>75</sup> Para 5 of Futong’s Written Submissions.

<sup>76</sup> (viii) In case the Annual Accounts and the Balance Sheet of a participating interested party is in the public domain, in accordance with the relevant law/ rules of the subject country or can be obtained by the public from the prescribed authorities, the same shall not be allowed by the authority to be treated as confidential under any circumstances”.

<sup>77</sup> Para 5 of Futong’s Written Submissions.

<sup>78</sup> “ (iv) A claim of confidentiality shall not be accepted by the authority on the grounds of commercial restrictions, for example, in case, the information is available in public domain and can be obtained by any party after payment of fee, etc. information / data procured from a private source as IBIS shall not be treated as confidential and the party submitting the same should submit a letter of permission for its disclosure from the party supplying the same before being accepted”

<sup>79</sup> Para 15 of Fasten Group’s Written Submissions, Para 13 of Fasten Group’s Written Submissions.

<sup>80</sup> Para 7.708, Panel Report, European Union – Anti – dumping Measures on Certain Footwear from China WT/DS405/R. (Para \_\_\_ Fasten Group’s Written Submissions; Para 56 of Fasten Group’s Rejoinder Submissions).

<sup>81</sup> Paras 13,24 of Fasten Group’s Written Submissions, Para 53 of Fasten Group’s Rejoinder Submissions.

- i. The applicant has not provided the following information as per Trade Notice 10/2018:
  - a) Names of major raw materials used in production of the PUC.
  - b) Average industry norms for capacity utilisation.
  - c) R & D Expenses
  - d) Funds raised: (a) equity (b) loans and advances (c) working capital (d) others, if any.
  - e) Non – injurious price calculation.<sup>82</sup>
- j. The applicant has not disclosed the calculation of the duty impact.<sup>83</sup>
- k. The CESTAT in the case of *Exotic Décor Pvt. Ltd. v. Designated Authority*<sup>84</sup> had observed that Designated Authority should provide the data to the interested parties in the form and manner it was received on record.

## **E.2 Submissions made by the domestic industry**

51. The following submissions have been made by the applicant with regard to confidentiality:

- a. The participating producers from the subject countries as well as the importers have claimed excessive confidentiality. The following information has not been provided by them in accordance with Trade Notice 10/2018 dated 7th September 2018:
  - a) Information related to related parties involved in production, sales and purchase of the subject goods.
  - b) Information relates to export volume, value of the subject goods, production process and domestic sales.
- b. The participating producers have also not disclosed the related parties through which the participating producers have exported the subject goods into India.<sup>85</sup>
- c. With regards to the claim that the applicant has not submitted authorisation in favour of their legal consultants along with Format X and Y, it is submitted that the same has been submitted by the applicant during the course of preliminary scrutiny

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<sup>82</sup> Para 26 of Fasten Group's Written Submissions, Para 54 of Fasten Group's Rejoinder Submissions.

<sup>83</sup> Para 24 of Fasten Group's Written Submissions.

<sup>84</sup>2020 SCC OnLine CESTAT 119.

<sup>85</sup> Para 64 of BFL's Written Submissions.

of the application and was found as per the prescribed format.<sup>86</sup>

- d. With respect to excessive claims on confidentiality made by the applicant, it is submitted that all relevant information has been disclosed in the non – confidential version. Information pertaining to cost of production, profitability etc. has been claimed confidential as such information is business sensitive.<sup>87</sup>
- e. The exporters may procure the financial information of the applicant company from the registrar of companies on payment of the applicable fee.<sup>88</sup>
- f. As far as disclosure of data procured from CRU International Ltd. and Cybex is concerned, it is submitted that the applicant has procured the same upon payment of fee and as per the purchase agreement with CRU and Cybex, the applicant is prohibited from sharing such data in the public domain. The other interested parties are at liberty to procure the same.<sup>89</sup>
- g. The applicant has provided country – wise summary of import data, demand and production data of India as part of its non – confidential application.<sup>90</sup>
- h. None of the other interested parties have brought any factual information on record contesting the claims based on data submitted by the applicant.<sup>91</sup>

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

52. The submission made by the other interested parties and the domestic industry have been addressed hereinunder.
53. The following issues have been raised by the other interested parties and the domestic industry in their submissions:
- a) Non - disclosure of information in the anti – dumping application / questionnaire responses as per Trade Notice 10/2018.
  - b) Non – disclosure of information procured from Cybex and CRU by the applicant.

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<sup>86</sup> Para 13 of BFL's Rejoinder Submissions.

<sup>87</sup> Para 18 of BFL's Rejoinder Submissions.

<sup>88</sup> Para 18 of BFL's Rejoinder Submissions.

<sup>89</sup> Para 19 of BFL's Rejoinder Submissions.

<sup>90</sup> Para 19 of BFL's Rejoinder Submissions.

<sup>91</sup> Para 19 of BFL's Rejoinder Submissions.

54. With regard to confidentiality of information submitted by the interested parties, Rule 7 of the AD Rules, 1995 provides as follows:

*“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and subrule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*

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

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

**i. Non - disclosure of information in the anti – dumping application / questionnaire response as per Trade Notice 10/2018.**

55. Futong has submitted that the applicant has not disclosed the authorization letter issued in the favour of its representatives in the non-confidential version of the applicant. Futong has also alleged that the applicant has claimed excessive confidentiality with respect to annual accounts and financial statements even though such information is in the public domain. the applicant has also shared the non – confidential version of its financial statements pertaining to financial years 2019 – 20 and 2021 – 22.
56. Fasten has further alleged that the applicant has not disclosed its production percentage, Indian production and details of the quantum of imports made by the applicant’s related parties. With respect to the same, the applicant has claimed that it has disclosed all relevant

information in the non – confidential version of the application.

57. The interested parties have contended that the domestic industry has not disclosed information pertaining to return on investment, costs and information contained in Section-VI. The Authority notes that such information is confidential by nature, and has accepted the confidentiality claimed by the domestic industry. Further, the applicant has also shared Formats X and Y and the names of major raw materials involved in the production of the PUC.
58. With respect to the submissions made by the other interested parties regarding the average industry norms for capacity utilization, R & D expenses, funds raised etc., it is noted that such information no longer forms part of Proforma IV – B of the application. Therefore, the question of providing non – confidential version of the same does not arise.
59. With respect to the details of imports made by the applicant's related party, it is noted that the quantum of imports carried out by a company is commercial and business-sensitive information. The disclosure of such information may lead to the revelation of a company's strategy to its competitors. It is also noted that the individual quantum of imports sent by exporters into India is also accorded confidentiality on the same footing. The Authority, therefore, confirms the same as confidential information.
60. The applicant has also alleged that Fasten Group has not disclosed the sales channel of the export and domestic transactions made by it. It is noted that prior to the issuance of the disclosure statement, Fasten Group has circulated the details of its sales channel.
61. The applicant has also alleged that Futong has not disclosed information pertaining to its related parties in its questionnaire response. The Authority notes that Futong has circulated the list of its related parties with the other interested parties.

**ii. Non – disclosure of information procured from Cybex and CRU by the applicant.**

62. Futong and Fasten Group have submitted that the applicant has not disclosed the import data and production figures submitted by it as part of its application. A specific query in this regard was posed to the applicant regarding the confidentiality of such data. The applicant has submitted the terms of the purchase agreement. It is noted that CRU supplies the data on a confidential basis to the purchasers. The terms of the agreement specifically stipulate that the contents of such data cannot be disclosed to any other party. It is further noted that

a non – confidential version of such data has already been circulated by the applicant with the other interested parties. Thus, the submissions made by the Fasten Group and Futong in this context are not found to be meritorious. The other interested parties are at liberty to procure the said data by entering into similar separate agreements.

63. Futong and Fasten Group have also made similar submissions with respect to the Cybex data submitted by the applicant. The applicant’s purchase agreement with Cybex also specifically mentions that such data has been supplied to the applicant on a confidential basis and therefore, the applicant cannot share the same in the public domain. Thus, the submission made by the Fasten Group and Futong in this context cannot be accepted. The other interested parties are at liberty to procure the same.
64. With respect to the other information/ data submitted by the interested parties and the domestic industry on a confidential basis, the same was examined with regard to the sufficiency of such claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, parties providing information on a confidential basis were directed to provide a sufficient non-confidential version of the information filed on a confidential basis. The Authority made available the non-confidential version of the information/ data submitted by all interested parties by directing such parties to share the non-confidential version of their submissions through e-mails.

#### **E.4 Post – disclosure comments by the other interested parties**

65. The other interested parties have made the following submissions:
- a. The applicant has claimed excessive confidentiality and not has not provided non – confidential summary and indexation which is in violation of Trade Notice No. 10/2018.<sup>92</sup>

#### **E.5 Post – disclosure comments by the other interested parties**

66. The domestic industry has made no post – disclosure comments concerning confidentiality of information.

#### **E.6 Examination by the Authority**

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<sup>92</sup> Para 16 of Fasten Group’s Post – Disclosure Comments.

67. Fasten Group has alleged that the applicant has not provided indexation and that the applicant has claimed excessive confidentiality. It is noted that the Authority has undertaken specific examination of the issues raised by Fasten Group and the other interested parties through their post – hearing written and rejoinder submissions in paragraphs 54 – 63 of these final findings. The comment made by Fasten Group is general in nature and does not point out any specific issue with respect to confidentiality of a particular information. In view of the same, the Authority is not able to examine the claims regarding inconsistency with Trade Notice 10/2018. As far as indexation of information in the anti – dumping application is concerned, it is noted that the same was provided by the applicant.

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

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

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

- a. China PR should be treated as market economy in the present investigation.<sup>93</sup>
- b. Paragraph 15 (d) of China PR's Accession Protocol to WTO was set to expire 15 years subsequent to China's accession to WTO i.e., 11<sup>th</sup> December 2016 and thereafter, WTO member states are under an obligation to accord market economy status to China PR. Post the aforementioned date, the WTO member nations irrespective of the status under their domestic laws, has to determine the normal value of the producers from China PR based on their prices and costs. This interpretation has also been upheld by the Appellate Body in *EC – Fasteners*<sup>94,95</sup>
- c. The applicant has not provided justifications for disregarding methodologies available under para 7 of Annexure I to the AD Rules, 1995 before calculating normal value based on its own cost of production.<sup>96</sup>
- d. The Authority should compute the normal value of exporters from China PR based on the cost of the production of other subject market economy countries. While

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<sup>93</sup> Para 31 of Fasten Group's Written Submissions.

<sup>94</sup> Para 289, Appellate Body Report, *European Communities - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* WT/DS/AB/R (adopted on 12<sup>th</sup> February 2016).

<sup>95</sup> Para 13 of Futong's Written Submissions.

<sup>96</sup> Para 31 of Fasten Group's Written Submissions.

doing the same, the Authority should factor in international prices of the raw material to have a fair comparison of normal value and export price.<sup>97</sup>

- e. The adjustments claimed by the applicant in the computation of the export price are inappropriate and the Authority is requested to verify the same.<sup>98</sup>
- f. The export price and landed price of the Fastens Group should be calculated based on the prices and data submitted on record.<sup>99</sup>
- g. The applicant has not provided any evidence to support its claims of post-import discounts or longer credit periods to customers. The applicant has also not provided evidence for its allegation pertaining to the overvaluation of the subject goods.<sup>100</sup>

## **F.2 Submissions made by the domestic industry**

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

- a. It is submitted that significant price distortion exists in China PR due to government intervention. None of the participating producers from China has provided evidence that they are operating in market economy conditions.<sup>101</sup>
- b. In a recently concluded investigation in respect of optical fiber cables, which is a downstream product of the PUC, the European Commission has stated that the market of optical fiber cables in China PR is affected by substantial government intervention.<sup>102</sup>
- c. There is significant dumping of the subject goods from the subject countries<sup>103</sup> during the POI due to which the domestic industry has been facing significant injury and consequently, it has not been able to make profitable sales.<sup>104</sup>
- d. It is submitted that during the oral hearing, the applicant had claimed that only

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<sup>97</sup> Para 32 of Fasten Group's Written Submissions.

<sup>98</sup> Para 7 of Futong's Written Submissions.

<sup>99</sup> Paras 4, 33 Fasten Group's Written Submissions.

<sup>100</sup> Para 41 Fasten Group's Rejoinder Submissions.

<sup>101</sup> Para 20 of BFL's Rejoinder Submissions.

<sup>102</sup> Paras 20 - 21 of BFL's Rejoinder Submissions.

<sup>103</sup> Para 16 of Corning India's Written Submissions.

<sup>104</sup> Para 33 of BFL's Written Submissions.

imports made by Sterlite India through its joint venture Sterlite China in China PR were at non - injurious prices. It did not indicate that imports made by Sterlite through other exporters were at fair prices and should the Authority determine that Sterlite China has also dumped exports into India, it should take appropriate action.<sup>105</sup>

- e. It is submitted that export price from each of the subject countries is significantly lower than the domestic industry's cost of sales.<sup>106</sup>
- f. Futong's related parties<sup>107</sup> have not filed their questionnaire response and information pertaining to its complete supply chain has not been provided.<sup>108</sup> The Authority should ascertain whether such entities have exported during the POI.<sup>109</sup>

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

70. The examination of the submissions made by the domestic industry and the other interested parties have been made hereinunder.
71. The following issues have been raised by the interested parties and the domestic industry as part of their submissions:
  - a. Market economy treatment of China
  - b. Computation of normal value based on the domestic industry's cost of production.
  - c. Determination of normal value and export price for Futong, China PR.
  - d. Determination of normal value and export price for Fasten Group, China PR.
  - e. Determination of normal value and export price for Sterlite China, China PR.
  - f. Determination of normal value and export price for residual category of producers, China PR
  - g. Determination of normal value and export price for residual category of producers

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<sup>105</sup> Para 3 of BFL's Rejoinder Submissions.

<sup>106</sup> Para 5 of BFL's Rejoinder Submissions.

<sup>107</sup> The name of the entities are as below-

- a. Futong Sumitomo (Jiashan) Jiaying
- b. Xinmao Tianjin
- c. Sumitomo-Futong SFF (Hangzhou)
- d. Futong Xinmao (Chengdu)
- e. Xinmao Jinan
- f. Futong-Chengdu

<sup>108</sup> Para 25 of Corning India's Written Submissions; Para 14 of Corning India's Rejoinder Submissions.

<sup>109</sup> Para 26 of Corning India's Written Submissions.

Korea RP.

- h. Determination of normal value and export price for residual category of producers Indonesia.

**i. Market economy treatment of China**

72. It is noted that both Futong and Fasten Group have argued for treatment for China PR as a market economy country. The argument is based on the premise that with the expiration of Article 15 (a) (ii) of China's Accession Protocol on 11 December 2016, WTO members, including India are under an obligation to treat China PR as a market economy country. Futong has placed reliance on the WTO's Appellate Body Report in *EC – Fasteners*<sup>110</sup> to substantiate the same.
73. The Authority notes that Futong's reliance on the Appellate Body's Report in *EC – Fastener* is misconceived. The question before the Appellate Body in that dispute did not pertain to the computation of normal value but rather related to the computation of export price<sup>111</sup>.
74. 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*

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<sup>110</sup> See *supra* note 90.

<sup>111</sup> "288. We do not consider that the references in paragraph 15(a)(i) and (ii) to producers having to show that "market economy conditions prevail ... with regard to the manufacture, production and sale" of a product means that paragraph 15(a) permits any derogations also with respect to the determination of export prices. We reach this conclusion because, when producers are not able to show that market economy conditions prevail (including with regard to the sale of the product), paragraph 15(a) makes it clear that all an importing WTO Member is allowed to do as a consequence is to "use a methodology that is not based on a strict comparison with domestic prices or costs in China". (emphasis supplied).

*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 nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector."*

75. The treatment of China PR as a non – market economy does not solely stem from Article 15 (a) (ii) which Futong has claimed to have expired on 11<sup>th</sup> December 2016 but also flows from

the remaining text of Article 15 i.e., subparagraph (a), as well as the broader rules set forth in Article VI of GATT 1994 and Article 2.2.1.1 of the WTO Agreement on Anti – dumping. The application of these provisions makes it amply clear that responding producers from China PR have to supply additional information/ data by submitting the market economy questionnaire. In the absence of the same, the Authority would resort to provisions of para 7 of Annexure I to the AD Rules, 1995 for computation of the normal value of producers from China PR.

76. In the present investigation, three producers from China PR – Futong, Fasten Group and Sterlite China have participated in the investigation. None of the producers have claimed market economy treatment.<sup>112</sup> Accordingly, the normal value for producers from China PR has been computed in terms of para 7 of Annexure I to the AD Rules, 1995.

**ii. Computation of normal value based on the domestic industry's cost of production.**

77. The applicant has computed the normal value of the subject goods from China PR based on its cost of production plus selling, general and administrative expenses and a reasonable profit. Fasten Group has argued that the applicant has not provided justifications for disregarding the other methodologies available under para 7 of Annexure I to the AD Rules, 1995. During the course of verification, the question was put before the applicant. The applicant explained that constructed normal value has been used as information regarding the price of the subject goods in any other market economy is not available in the public domain. Moreover, owing to the low volume of subject imports from other countries, export prices from other countries to India can also not be considered representative.

78. Fasten Group has argued for using cost of production of producers from other subject countries for calculation of normal value. It is noted that none of the producers from the other subject countries have participated in the investigation. Therefore, the Authority does not have data pertaining to cost or prices in a market economy third country. Thus, the Authority cannot consider computation of normal value on this basis. Further, given the fact that the PUC does not have a dedicated customs classification export price from third country could not be considered for computation of normal value. Moreover, the import volume from non – subject countries is also below the *de – minimis* level. Therefore, such export price from third countries to India price could also not be considered for computation of normal value.

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<sup>112</sup> See Part III Section I Question 1 of Futong's and Fasten Group's Questionnaire response.

**iii. Determination of normal value and export price for Futong, China PR**

79. The domestic industry as well as the supporter has submitted that Futong's related parties who are engaged in the production of the PUC have not submitted the questionnaire response.
80. In its initial questionnaire response, Futong had only provided the names of 18 of its related parties. The investigating team through an email dated 27<sup>th</sup> January 2023 sought the list of activities carried out by the related parties of Futong. In its response, Futong provided a revised list of its related parties which increased to 51 in number. It is noted that the names of certain entities namely, Chendu Futong Optical Communication Technology Co.,Ltd., Futong Group (Jiashan) Communication Technology Co., Ltd., Hangzhou SEI-Futong Optical Fiber Co.,Ltd., Tianjin SEI-Futong Optical Fiber Co.,Ltd., Transtech Optical Communication Company Limited, Futong Optical Fiber & Cable (Chengdu) Co., Ltd., Futong Sumitomo (Jiashan) Jiaxing Co., Ltd. and Jiaxing Futong Group Co., Ltd., which were involved in the production of the PUC or the sales of the PUC did not form part of the original questionnaire response.
81. The justification provided by Futong during the verification regarding the revision of the list was that the subsequent parties that were added to the list by Futong were indirectly related to it and therefore, their names were not submitted at the stage of filing the questionnaire response.
82. Futong had also not clarified about its joint ventures or procurement of raw materials from its related parties in its questionnaire response.
83. However, the Authority notes that the aforementioned issues highlighted by the domestic industry only affects the normal value of Futong. Futong is a producer based out of China PR and for all producers from China PR, the Authority constructs normal value in terms of para 7 of Annexure I to the AD Rules 1995, unless the specific exporter or producer provides evidence to establish that it has been operating on market economy principles. In the present investigation, it is noted that Futong has not requested for market economy treatment. Therefore, the Authority has not adopted the normal value claimed by Futong and has instead computed the normal value in accordance with para 7 of Annexure I to the AD Rules, 1995.

**Computation of normal value**

84. The normal value has been determined as per the “price actually paid or payable in India” as stipulated in para VII of Annexure – I to the AD Rules, 1995. The normal value has been computed on the basis of the cost of production of the domestic industry, with reasonable addition for selling, general and administrative expenses, and profits.

#### **Computation of export price**

85. Based on the information furnished in the exporter questionnaire response, the Authority notes that Futong is a producer and exporter of the subject goods from China PR. Futong has exported \*\*\* KFKM of the subject goods directly to its unrelated customers in India during the POI. Futong has provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, marine insurance, inland transportation, bank charges, port and other expenses and credit cost. The Authority has undertaken desk verification of the information submitted by Futong and examined Futong’s claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Futong has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

#### **iv. Determination of normal value and export price for Fasten Group, China PR**

#### **Computation of normal value**

86. The normal value has been determined as per the “price actually paid or payable in India” as stipulated in para VII of Annexure – I to the AD Rules, 1995. The normal value has been computed on the basis of the cost of production of the domestic industry, with reasonable addition for selling, general and administrative expenses, and profits.

#### **Computation of export price**

87. Based on the information furnished in the exporter questionnaire response, the Authority notes that the Fasten Group comprises of five companies which include one producer Jiangsu Fasten Photonics Co., Ltd., and one exporter, Fasten Group IMP. & EXP. CO., Ltd. The rest of the entities, namely Jiangsu Fasten Optical Cable Co., Ltd., Potevio Fasten Optical Communication Co., Ltd. and Jiangsu Fasten Optical Communication Technology Co., Ltd. involved in domestic as well as export sales of the subject goods are traders. Fasten group has exported the subject goods to India under two different sales processes – general trade and processing trade.

88. Under the processing trade Jiangsu Fasten Optical Communication Technology Co., Ltd. only processes the raw material (preform) procured from Jiangsu Fasten Optical Communication Technology Co., Ltd. into the PUC for Jiangsu Fasten Optical Communication Technology Co., Ltd. Jiangsu Fasten Optical Communication Technology Co., Ltd. further sells the PUC to Fasten Group IMP. & EXP. CO., Ltd. which then exports the subject goods to unrelated customers in India.
89. Under the general trade Jiangsu Fasten Optical Communication Technology Co., Ltd. manufactures the subject goods and further sells them through Potevio Fasten Optical Communication Co., Ltd. and Jiangsu Fasten Optical Cable Co. Ltd. to Fasten Group IMP. & EXP. CO. Ltd., which then exports the subject goods to unrelated customers in India.
90. Fasten Group has exported \*\*\* KFKM, to unrelated customers in India. Fasten Group has provided the relevant information in the form and manner required, and has claimed adjustments on account of ocean freight, air freight (in certain transactions), marine insurance, inland transportation, bank charges, packing cost and credit cost. The Authority has undertaken desk verification of the information submitted by Fasten Group and examined Fasten Group's claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Fasten Group has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

#### **v. Determination of normal value and export price for Sterlite China, China PR**

##### **Computation of normal value**

91. The normal value has been determined as per the "price actually paid or payable in India" as stipulated in para 7 of Annexure – I to the AD Rules, 1995. It has been computed on the basis of the cost of production of the domestic industry, with reasonable addition for selling, general and administrative expenses, and profits.

##### **Computation of export price**

92. Based on the information furnished in the exporter questionnaire response, the Authority notes that Sterlite China has exported \*\*\* KFKM, to its related entity, Sterlite India, in India. They have provided the relevant information in the form and manner required, and has claimed adjustments on account of ocean freight (port and other expenses included), insurance, inland transportation, and packing cost. The Authority has verified the claims made during desk verification of the information submitted by Sterlite China and have allowed them accordingly. The dumping margin for Sterlite China has been redetermined

after considering the comments received at the post – disclosure stage which has been explained in paragraphs 104 – 108 below. Accordingly, the net export price at ex-factory level for Sterlite China has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

**vi. Determination of normal value and export price for all other producers from China PR**

93. The normal value and export price for all producers from China PR have been determined on the basis of available facts and the same is mentioned in the dumping margin table below.

**vii. Determination of normal value and export price for all producers from Korea RP**

94. The Authority notes that none of the producers/exporters from Korea RP has participated in the present investigation or filed questionnaire response. In the absence of cooperation from the producers/exporters of the PUC in Korea RP, the Authority is constrained to proceed on facts available in terms of Rule 6(8) of the AD Rules, 1995 with regard to the determination of normal value and export price for all non-cooperative producers/exporters from Korea RP.

95. The Authority has, therefore, constructed the normal value for all non-cooperative producers/exporters from Korea RP on the basis of the cost of production of the domestic industry, duly adjusted with selling, general and administrative expenses, plus a reasonable profit. The constructed normal value so determined for producers/exporters from Korea RP is stated in the below – mentioned dumping margin table.

96. The Authority has determined the export price after considering the volume and value of imports for the POI as per DGCI&S data. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission and bank charges. The export price so determined is stated in the below – mentioned dumping margin table.

**viii. Determination of normal value and export price for all producers from Indonesia**

97. The Authority notes that none of the producers/exporters from Indonesia has participated in the present investigation or filed questionnaire response. In the absence of cooperation from the producers/exporters of the PUC in Indonesia, the Authority is constrained to

proceed on facts available in terms of Rule 6(8) of the AD Rules, 1995 with regard to the determination of normal value and export price for all non-cooperative producers/exporters from Indonesia.

98. The Authority has, therefore, constructed the normal value for all non-cooperative producers/exporters from Indonesia on the basis of the cost of production of the domestic industry, duly adjusted with selling, general and administrative expenses, plus reasonable profits. The constructed normal value so determined for producers/exporters from Indonesia is stated in the below – mentioned dumping margin table.

99. The Authority has determined the export price after considering the volume and value of imports for the POI as per DGCI&S data. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission and bank charges. The export price so determined is stated in the below – mentioned dumping margin table.

### F.3.2 Dumping Margin

100. Considering the normal value and export price for subject goods, the dumping margins are as follows:

DUMPING MARGIN TABLE						
SN	Producer	Normal Value (₹/FKM)	Net Export Price (₹/FKM)	Dumping Margin (₹/FKM)	Dumping Margin (%)	Dumping Margin Range
<b>China PR</b>						
1.	Hangzhou Futong Communication Technology Co., Ltd.	***	***	***	***	10 – 20
2.	Jiangsu Fasten Photonics Co., Ltd	***	***	***	***	20 – 30
3.	Jiangsu Sterlite Fiber Technology Co., Ltd.	***	***	***	***	0-10

4.	Any other producer	***	***	***	***	20 – 30
<b>Korea RP</b>						
1.	Any producer	***	***	***	***	20 -30
<b>Indonesia</b>						
2.	Any producer	***	***	***	***	20 -30

*Table F 1***F.4 Post – disclosure comments by the other interested parties**

101. The following submissions were made by the other interested parties:

- a. Sterlite China has become wholly owned subsidiary of Sterlite India and accordingly its name has been changed from Jiangsu Sterlite Tongguang Fiber Co. Ltd. to Jiangsu Sterlite Fiber Technology Co., Ltd. The company is now a limited liability company registered in China PR.<sup>113</sup> This change has no bearing on the determination of dumping and computation of margins by the Authority. Accordingly, the Authority is requested to consider the same for all future purposes in the investigation.<sup>114</sup>
- b. Sterlite China should not be granted an individual rate of duty<sup>115</sup> because of the following reasons:
  - i. Sterlite China is a related company of Sterlite India and is wholly owned by Sterlite India. Sterlite India has not filed the questionnaire response before the Authority.<sup>116</sup> Sterlite India is a user and should have filed the user questionnaire response. However, Sterlite India has merely filed supporter letter and no detailed information has been filed by Sterlite India as is discernible from the information mentioned in Table B2 of the disclosure statement.<sup>117</sup>
  - ii. Sterlite India has imported more than 30% of total imports into India and therefore, it should have provided information pertaining to imports so that Authority could have assess information related to export price, landed value etc.<sup>118</sup>

<sup>113</sup> Page 2 of Sterlite China’s Post – Disclosure Comments.

<sup>114</sup> Page 2 of Sterlite China’s Post – Disclosure Comments.

<sup>115</sup> Page 6 of Futong’s Post – Disclosure Comments.

<sup>116</sup> Pages 1- 2 of Futong’s Post – Disclosure Comments.

<sup>117</sup> Page 3 of Futong’s Post – Disclosure Comments.

<sup>118</sup> Page 4 of Furtong’s Post – Disclosure Comments.

- iii. It has been the consistent practice of DGTR to analyse complete information regarding the value chain and it had done the same<sup>119</sup> in the anti – dumping investigation concerning imports of electrogalvanized steel<sup>120</sup>. In that case, Authority had undertaken verification of the end-user and determined that finished products were sold at losses and export price of the exporter was computed after taking into account such losses.<sup>121</sup>
- iv. In the present investigation, the Authority has not undertaken such verification.<sup>122</sup> Further, as per the available information in the Annual Report of Sterlite India, it is amply clear that Sterlite India has suffered losses in the POI which raises doubt regarding the veracity of the information pertaining to Sterlite India.
- v. Section 9A (b) of the Customs Tariff Act, 1975 requires that in case of unreliable export price due to related party transaction because of compensatory arrangement, the Authority should construct export price based on the price on which the imported articles are first resold to independent buyer.<sup>123</sup> In the present case, the export price of Sterlite China to Sterlite India is at a much higher price as compared to other exporters which indicates that there is a compensatory arrangement between Sterlite India and Sterlite China.<sup>124</sup>
- vi. The Authority should not consider the response submitted by Sterlite China on behalf of Sterlite India as Sterlite China is not authorised to do so. No certificate as required under Appendices – A/B/C has been filed by the end user as required under the Trade Notice.<sup>125</sup>
- vii. The Authority should construct normal value based on the cost of production of other subject market economy countries instead of simply taking the cost of production of the domestic industry. Further, the Authority should consider international prices of raw materials for

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<sup>119</sup> Page 4 of Futong's Post – Disclosure Comments.

<sup>120</sup> Case No AD (OI) – 07/21: Anti-dumping investigation concerning imports of “Electrogalvanized Steel” from Korea RP, Japan and Singapore.

<sup>121</sup> Page 5 of Futong's Post – Disclosure Comments.

<sup>122</sup> Page 4 of Futong's Post – Disclosure Comments.

<sup>123</sup> Page 2 of Futong's Post – Disclosure Comments.

<sup>124</sup> Page 5 of Futong's Post – Disclosure Comments.

<sup>125</sup> Para 6 of Futong's Post – Disclosure Comments.

computation of normal value and not simply accept the computations provided by the applicant.<sup>126</sup>

### **F.5 Post – disclosure comments by the domestic industry**

102. The following submissions were made by the domestic industry:

- a. The disclosure statement notes that Futong had not disclosed the name of 51 related entities which were engaged in production of the PUC. This cannot be considered an inadvertent error and the same were willfully suppressed by Futong and would not have been disclosed had the Authority not pointed out the same.<sup>127</sup>
- b. As per the disclosure statement, Futong has explained that the names of all such companies were not disclosed as these were indirectly related. In this regard, it is submitted that AD Rules, 1995 makes no such distinction regarding “directly” or “indirectly” related companies. If related companies are engaged in production/export of the PUC, the names of such entities must be disclosed. The applicant, therefore, requests the Authority to reject Futong’s questionnaire response and declare it as non – cooperative in the present investigation.<sup>128</sup>
- c. The exporter’s questionnaire response clearly prescribes for providing the details of all affiliated entities that are involved in the production of the subject goods or the sales of the subject goods irrespective of the fact whether the exporter is claiming market economy treatment or not. Therefore, the non-disclosure of all facts by Futong in its questionnaire response makes the response deficient and accordingly, the Authority should reject the said response.<sup>129</sup>

### **F.6 Examination by the Authority**

103. The interested parties have raised the following issues:

- i. Rejection of Sterlite China’s questionnaire response.
- ii. Rejection of Futong’s questionnaire response.
- iii. Construction of normal value on the basis of cost of production information from

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<sup>126</sup> Paras 19 – 20 of Fasten Group’s Rejoinder Submissions.

<sup>127</sup> Para 7 of BFL’s Post – Disclosure Comments.

<sup>128</sup> Para 8 of BFL’s Post – Disclosure Comments.

<sup>129</sup> Para 17 of Corning India’s Post – Disclosure Comments.

other market economy subject countries.

104. Futong has opposed the Authority's proposed determination of granting individual duty to Sterlite China on the ground that Sterlite China's related party in India, Sterlite India, has not filed the appropriate information as required under Part IV of the questionnaire response. In this regard, it is noted that Sterlite China, the related party of Sterlite India has provided the information, as required under Part IV from Sterlite India, as a part of its questionnaire response. The information provided by Sterlite China in Part IV of its questionnaire response has been verified by the investigating team and Sterlite India has presented all documents required for verification of the information provided in Part IV of Sterlite China's questionnaire response.
105. It is noted that as long as the Authority is in receipt of the relevant information and such information can be subsequently verified through appropriate documents of the relevant entity, rejection of questionnaire response would be antithetical to the principle enshrined under the AD Rules, 1995. The Part IV information provided by Sterlite China which was subsequently verified through bills of entry submitted by Sterlite India was sufficient for determination of export price and landed value. Therefore, the same cannot be a ground for rejection of Sterlite China's questionnaire response.
106. Futong has further opposed the Authority's determination regarding granting of individual duty to Sterlite China on the ground that Sterlite India should have filed the user questionnaire response instead of the information as required under Part IV of the questionnaire response (which was filed by Sterlite China on behalf of Sterlite India). Futong has further submitted that the high export price of related party imports between Sterlite China and Sterlite India are indicative of the fact that there is some compensatory arrangement between the two entities. In this regard, the Authority notes that Sterlite China and Sterlite India were directed to file the profitability statement and information pertaining to utilization of the PUC in the end product i.e., optical fiber cables as Sterlite India does not resale the PUC. The same has been provided to the Authority and therefore, the questionnaire response of Sterlite India cannot be rejected merely on this ground.
107. Futong has further argued that as per Sterlite India's Annual Report, Sterlite India has been operating at losses. Accordingly, it has submitted that appropriate adjustments should have been carried out to reflect such losses as was done in a previous investigation.<sup>130</sup> In this regard, it is noted that investigation team has verified the profitability of the end product and has

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<sup>130</sup> *Supra* note 120.

found that Sterlite India has \*\*\* overall profitability in the POI in the optical fiber cable segment. Therefore, no adjustments on account of losses be made to the net export price.

108. Futong has also questioned the reliability of the export price of Sterlite China and has argued that a compensatory arrangement exists between Sterlite China and Sterlite India. The Authority has compared the CIF price of imports made Sterlite India and it was found that there exists significant difference in the CIF price of the PUC sold through related party imports and other unrelated parties, which makes the CIF price of the related party transactions suspect. Therefore, the Authority has not considered the same for computation of net export price. In view of the same, the Authority has constructed the net export price as well as the landed value based on the weighted average CIF price of imports from China PR made through unrelated parties by Sterlite India. All adjustments as claimed by Sterlite India have been accordingly adjusted. Accordingly, Sterlite China's dumping margin and injury margin have been revised.
109. The applicant as well as supporter have requested the rejection of Futong's questionnaire response on the ground of non – disclosure of information pertaining to its related parties in terms of Rule 6 (8) of the AD Rules, 1995. It is noted that neither the WTO Agreement on Anti – dumping nor AD Rules, 1995 posit that each and every act of non - disclosure would lead to the rejection of the entire questionnaire response of an interested party. In fact, what needs to be evaluated in each and every situation is the effect of such non-disclosure on the remainder of the information i.e., whether the non-submission or non-cooperation pertaining to the information under question would render the rest of the information filed by the interested party futile. Where the information whose veracity is under question is proved to be incorrect or such information is not disclosed and such information is so critical to the response which would make the rest of the submission meaningless, then in such a scenario, the questionnaire response should be rejected in its entirety. In other circumstances, non-cooperation or non – disclosure of information is to be dealt proportionately.
110. As noted in the disclosure statement, the initial non – disclosure of information pertaining to certain related parties involved in the production of the PUC it is noted that none of such parties have exported the PUC into India during the POI. The Authority has verified the same through DG systems data. Therefore, rejection of entire questionnaire response merely on this ground would be disproportionate. Accordingly, the contention raised by the applicant and supporter are not accepted.
111. Fasten Group has submitted that the Authority should construct normal value on the basis of information regarding other market economy subject countries. As elaborate in paragraph

78 above, no producers from such market economy subject countries have participated in the investigation. Therefore, the Authority could not construct the normal value by resorting to such methodology.

## **G. METHODOLOGY OF INJURY ASSESSMENT AND EXAMINATION OF CAUSAL LINK**

112. Rule 11 of the AD Rules, 1995 read with Annexure II to the AD Rules, 1995 provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*”. Further, in considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
113. The Authority has examined the effect of dumped imports on the state of the domestic industry in the paragraphs below.

### **G.I CUMULATIVE ASSESSMENT**

#### **G.I.1 Submissions made by the other interested parties**

114. The following submissions have been made by the other interested parties with respect to cumulative assessment of imports from the subject countries:
- a. Given the fact that the landed value of subject imports from China PR is higher than that of Indonesia and Korea RP, the injury to the domestic industry due to subject imports from China PR should be assessed individually.<sup>131</sup>
  - b. The imports from China PR should not be cumulated with imports from Korea RP and Indonesia as the conditions of competition are not appropriate.<sup>132</sup> The volume of imports from China PR increased by 16 % whereas imports from

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<sup>131</sup> Para 11 of Futong’s Written Submissions; Para 6 of Futong’s Rejoinder Submissions.

<sup>132</sup> Para 39 of Fasten Group’s Written Submissions, Para 33 of Fasten Group’s Rejoinder Submissions

Indonesia increased by 86488 % and Korea RP by 75 %.<sup>133</sup>

- c. Since, 1 July 2019, the applicable basic customs duty on the imports of the PUC from China PR has been raised to 15 % whereas in the case of Indonesia and Korea RP, the basic customs duty is nil due to their respective free trade agreements.<sup>134</sup>
- d. Price undercutting from China PR is negative as per the application and the landed value of China PR is higher than Korea RP and Indonesia.<sup>135</sup>
- e. The rate of increase of imports from other subject countries is much higher than China PR.<sup>136</sup>

### **G.I.2 Submissions made by the domestic industry**

115. The following submissions have been made on behalf on the domestic industry by the applicant and the supporter with respect to cumulative analysis of imports from the subject countries:

- a. The subject imports from the subject countries are identical to each other and the article produced by the applicant. The said imports compete *inter se* as well as with the goods produced by the applicant. Therefore, the Authority should cumulatively assess the impact of such imports to have an accurate picture of the injury faced by the domestic industry.<sup>137</sup>
- b. There is nothing in Art. 3.3 of the WTO Agreement on Anti – dumping or para (iii) of Annexure II to the AD Rules, 1995 that obliges the Authority to carry out a country-specific import volume or price analysis before undertaking a cumulative assessment.<sup>138</sup> The same has been explained by the Appellate Body in its report in *EC – Tube or Pipe Fittings*<sup>139</sup>.

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<sup>133</sup> Para 39 of Fasten Group's Written Submissions.

<sup>134</sup> Para 40 of Fasten Group's Written Submissions; Para 33 of Fasten Group's Rejoinder Submissions.

<sup>135</sup> Para 33 of Fasten Group's Rejoinder Submissions.

<sup>136</sup> Para 34 of Fasten Group's Rejoinder Submissions.

<sup>137</sup> Para 30 of BFL's Written Submissions; Para 11 of BFL's Rejoinder Submissions; Para 19 of Corning India's Written Submissions.

<sup>138</sup> Para 30 of BFL's Written Submissions; Para 12 of BFL's Rejoinder Submissions.

<sup>139</sup> Appellate Body Report, *European Communities — Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R (adopted on 18 August 2003).

Paras 109 – 110: “We find no basis in the text of Article 3.3 for Brazil's assertion that a country-specific analysis of the potential negative effects of volumes and prices of dumped imports is a pre-condition for a cumulative assessment of the effects of all dumped imports. Article 3.3 sets out expressly the conditions that must be fulfilled before the investigating authorities may cumulatively assess the effects of dumped imports from more than one country. ***There is no reference to the country-by-country volume and price analyses that Brazil contends are pre-conditions to cumulation.*** In fact, Article 3.3 expressly requires an investigating authority to examine country-specific volumes, not in the manner suggested by Brazil, but for purposes of determining whether the 'volume of imports from each country is not

- c. The other interested parties' claims that imports from China PR should not be cumulated with imports from other object countries only on the ground of higher prices of subject goods from China PR is unfounded in law.<sup>140</sup>
- d. Further, the price effect examination i.e., injury margin, price undercutting as well as underselling analysis is conducted for each country individually.<sup>141</sup>

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

116. Para (iii) of Annexure – II to the AD Rules, 1995 states that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:

- a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as a percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the imports from individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and
- b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

117. Further, in order to ascertain whether cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles, the following parameters have to be examined:

- a. Whether the product supplied by different parties are like articles and are comparable in properties?
- b. Whether domestically produced subject goods and the imported products are interchangeable?
- c. Whether there is direct competition between the domestic product and the imported product and inter-se between the imported products?
- d. Whether the consumers are using domestic material and imported material interchangeably and the exporters and the domestic industry have sold the same product to same set of customers?

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negligible.'" (emphasis as supplied in the submissions).

<sup>140</sup> Para 11 of BFL's Rejoinder Submissions.

<sup>141</sup> Para 11 of BFL's Rejoinder Submissions.

- e. Whether the import price from subject countries have moved in tandem?
118. The domestic industry and the other interested parties have raised the following issues before the Authority with respect to cumulative assessment of the dumped imports from the subject countries:
- a. Whether cumulative assessment is appropriate in view of the difference in the landed value of the subject goods from the subject countries?
  - b. Whether cumulative assessment is appropriate in view of the difference in conditions of competition between the subject imports from the subject countries?

**i. Difference in the landed value of the subject goods from the subject countries**

119. Futong has argued that given the difference in the landed value of the subject goods from the subject countries, the Authority should not cumulatively examine the impact of dumped imports from China PR along with the dumped imports from Indonesia and Korea RP. Fasten Group has submitted that a basic customs duty of 15 % is applicable on subject imports from China PR while the same is NIL for subject imports from the other subject countries. It has further been submitted that price undercutting from China PR is negative as per the application and therefore, cumulative analysis is not warranted.
120. In this regard, the domestic industry has submitted that higher prices of subject goods from one of the subject countries cannot be a ground for rejecting cumulative assessment of imports from the subject countries as a whole. It has further submitted that neither Article 3.3 of the WTO Agreement on Anti – dumping, 1994 nor para (iii) of Annexure – II to the AD Rules, 1995 lay down an obligation to carry out a country – specific volume or price analysis.
121. The Authority notes that neither para (iii) to Annexure II to the AD Rules, 1995 nor Article 3.3 of the WTO Agreement on Anti – dumping, 1994 lay down, the difference in price of the subject imports as a factor for rejection of cumulative analysis of subject imports. It is noted that the volume of subject goods from the subject countries is above the *de – minimis* requirement. Thus, the first limb of the cumulative analysis requirement as specified under AD Rules, 1995 is satisfied.

**ii. Difference in conditions of competition between the subject imports from the subject countries**

122. Fasten Group has argued that since the volume of imports from the subject countries has grown at an uneven rate, the conditions of competition between the subject imports from China PR and other subject countries differ.
123. With respect to the same, the Authority has examined the parameters explained in paragraph 115 and has reached the following conclusions:
- a. It is noted that subject goods imported from the subject countries are 'like article' to each other as all such goods adhere to the same ITU – T classification. Further, the user industry has imported the subject goods from one or more subject countries.
  - b. It is noted that subject goods imported from the subject countries and the goods produced by the domestic industry are like article to each other for reasons mentioned in paragraph 18 and are, therefore, interchangeable.
  - c. It is noted that users of the PUC have used the like article manufactured by the domestic industry as well as the subject goods interchangeably. It is also noted that the same grades of the PUC have been imported by users from two or more of the subject countries. Thus, there exists competition not only between the like article produced by the domestic industry but also between the subject imports from the subject countries.
  - d. It is further noted that the price of the subject goods from all the subject countries have significantly declined in relation to the base year and prices of the subject goods from all subject countries are below the price and cost of production of the domestic industry.
  - e. There is significant market presence of the subject goods from all subject countries in the Indian market, in absolute as well as relative terms during the POI.
124. In view of the above, the second limb of the cumulative analysis requirement as specified under AD Rules, 1995 is satisfied. The Authority has, therefore, cumulatively assessed the impact of the subject goods from the subject countries on the economic and financial parameters of the domestic industry.

**G.I.4 Post – disclosure comments by other interested parties**

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

- a. The Authority's proposal to cumulatively assess imports is incorrect. The major portion of the increase in volume of subject imports has been from Indonesia and Korea PR. The price undercutting of imports from China PR is negative as per the application. Further, the basic customs duty applicable to imports from China PR and other subject countries also differ.<sup>142</sup>

#### **G.I.5 Post – disclosure comments by the domestic industry**

126. No contesting claims or submissions have been made by the domestic industry on this issue.

#### **G.I.6 Examination by the Authority**

127. Fasten Group has disputed the cumulative analysis by contending that the volume of increase in imports from other subject countries is more than China PR. The Authority notes that as explained above the rate of increase in volume of imports differ due to low base year volume of imports from subject countries other than China PR. It is also noted that as opposed to the claims of the Fasten Group, the Authority has determined that price undercutting of the subject imports from China PR as positive. The Authority further notes that the requirements for cumulative assessment have already been examined in detail in paragraphs 117 – 122 above. In view of the same, the Authority does not accept Fasten Group's claim for decumulation of imports from the subject countries.

### **G.II Volume effect of the dumped imports**

#### **G.II.1 Submissions made by the other interested parties**

128. The following submissions have been made by the other interested parties with respect to the volume effect of the dumped imports:
  - a. The applicant has relied upon import data for the first three years of the injury period and has relied on CYBEX data for the POI. It is submitted that data should be collected from a single source for appropriate and adequate injury examination.<sup>143</sup>
  - b. The domestic industry has conceded that a significant volume of subject imports from China PR has occurred at fair value<sup>144</sup>. Therefore, China PR should be

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<sup>142</sup> Para 22 – 23 of Fasten Group's Rejoinder Submissions.

<sup>143</sup> Para 2 of Futong's Written Submissions.

<sup>144</sup> Para 15 of HFCL's Written Submissions.

excluded as a subject country.<sup>145</sup>

- c. The domestic industry has claimed that Sterlite Industries has made imports from China PR at non – dumped prices, therefore, such imports should be excluded from injury analysis.<sup>146</sup>
- d. The volume of imports from China PR has increased only by 16 points in the POI in comparison to the base year. During the same period, imports from Indonesia have steeply increased. Thus, injury if any is being caused due to the subject imports from Indonesia only.<sup>147</sup>
- e. The share of subject imports in the POI is merely 36 %.<sup>148</sup>
- f. The increase in the volume of imports from the subject countries is attributable to the sudden increase in demand for the subject goods. A large number of fiber expansion projects could not be materialized in 2019 – 2020 and 2020 – 2021 and have caused a steep increase in demand for the subject goods.<sup>149</sup> There was a decline in demand for the subject goods globally and the applicant has accepted the same in its financial statement.<sup>150</sup>
- g. The applicant’s injury is self-inflicted<sup>151</sup> as its related party, Birla Cables Limited<sup>152</sup>, as well as the supporter, Sterlite India, have imported very large quantities of the subject goods<sup>153</sup>.

## **G.II.2 Submissions made by the domestic industry**

129. The following submissions have been made on behalf on the domestic industry by the applicant and the supporter with respect to volume effect of the dumped imports:

- a. The volume of subject imports from each of the subject countries is above 3 % and the estimated dumping margin from each of the subject countries is above 2 %.<sup>154</sup>

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<sup>145</sup> Para 25 of HFCL’s Written Submissions.

<sup>146</sup> Paras 4 of Fasten Group’s Written Submissions.

<sup>147</sup> Para 3 of Fasten Group’s Written Submissions.

<sup>148</sup> Para 49 of Fasten Group’s Written Submissions.

<sup>149</sup> Para 43 of Fasten Group’s Written Submissions.

<sup>150</sup> Para 34 of Fasten Group’s Written Submissions.

<sup>151</sup> Para 44 of Fasten Group’s Written Submissions.

<sup>152</sup> Para 44 of Fasten Group’s Written Submissions.

<sup>153</sup> Para 46, 47 of Fasten Group’s Written Submissions.

<sup>154</sup> Para 30 of BFL’s Written Submissions.

- b. The volume of subject imports has increased significantly in the POI not only in absolute terms but also relative to the production of the applicant<sup>155</sup> as well as consumption<sup>156</sup> of the subject goods in India.<sup>157</sup>
- c. The volume of subject goods from the subject countries has increased significantly during the entire injury period<sup>158</sup>. The volume of imports in the POI is in excess of and at higher levels than the base year which was also the period of ‘recent increase’ in the safeguard investigation.<sup>159</sup>
- d. There has been a decline in the volume of subject goods in the second half of 2019 – 20 and 2020 – 21 primarily due to the COVID – 19 pandemic. However, the demand has recovered in the POI and is almost at the 2018 – 19 level. At the same time, the volume of imports has increased significantly as compared to the base year.<sup>160</sup>
- e. The demand for the subject goods has increased in the POI. However, such an increase in demand has been met exclusively by the dumped imports of the subject goods from the subject countries.<sup>161</sup>
- f. As regards the claims of the interested parties that there is no volume injury from China PR, it is submitted that imports from China PR have increased by 6,777 FKM as compared to 2020 – 21 and on the other hand, imports from Korea PR and Indonesia have increased by 971 FKM and 5 FKM.<sup>162</sup>

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

130. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in the volume of dumped imports, either in absolute terms or relative to production or consumption in India. The transaction – wise import data of DGCI&S has been considered for the purpose of injury assessment.
131. The Authority notes that exports made by Sterlite China to its related entity into India have been made at non – dumped prices. Therefore, the volume of such imports has been removed from the volume of dumped imports. Apart from such imports, all other imports of the subject goods into India are at dumped prices. Accordingly, rest of the subject imports have

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<sup>155</sup> See graph 2 in BFL’s Written Submissions.

<sup>156</sup> See graph 3 in BFL’s Written Submissions.

<sup>157</sup> Paras 38, 39 of BFL’s Written Submissions.

<sup>158</sup> Para 36 of BFL’s Written Submissions; Para 10 of Corning India’s Written Submissions.

<sup>159</sup> Para 36 of BFL’s Written Submissions.

<sup>160</sup> Para 37 of BFL’s Written Submissions.

<sup>161</sup> Para 39 of BFL’s Written Submissions.

<sup>162</sup> Para 4 of BFL’s Rejoinder Submissions.

been included in the injury assessment.

132. The following issues have been raised by the domestic industry and the other interested parties in their submissions:

- a. Whether the subject goods from the subject countries have injured the domestic industry?
- b. Whether the domestic industry is suffering from self – inflicted injury?

133. The import volumes of the subject goods from the subject countries are as follows:

S.N.	Particulars	Unit	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)
1.	Sales – Applicant	KFKM	***	***	***	***	***
	Trend	Index	100	41	58	99	99
2.	Sales – Supporter	KFKM	***	***	***	***	***
	Trend	Index	100	74	114	38	38
3.	Sales - Applicant + Supporter	KFKM	***	***	***	***	***
	Trend	Index	100	59	88	66	66
3.	Sales - Other Producers	KFKM	***	***	***	***	***
	Trend	Index	100	142	81	102	102
4.	Subject Countries' Imports	KFKM	8,294	3,307	3,583	10,214	9,856
	Trend	Index	100	40	43	123	119
5.	Other Countries' Imports	KFKM	1,761	672	644	661	661
	Trend	Index	100	38	37	38	38
6.	Total imports	KFKM	10,055	3,980	4,227	10,875	10,875
	Trend	Index	100	40	42	108	108
7.	Total Demand	KFKM	***	***	***	***	***
	Trend	Index	100	80	72	90	90

**Table G 1**

134. From the above, it is seen that the imports from the subject countries have increased from 8,294 KFKM in 2018-19 to 10,214 KFKM in the POI, i.e., an increase of 1,920 KFKM, despite there being a dip in the demand. Even if only dumped imports from the subject countries in the POI are considered, the volume of imports from the subject countries has increased to 9,856 KFKM i.e., an increase of 1,562 KFKM as compared to the base year. The quantum of such imports in the POI has even surpassed 2018-19 level. Further, as compared

to the previous year 2019-20, the subject imports have increased by 6,631 KFKM, as against increase in demand by \*\*\* KFKM. Thus, the subject imports have not only captured the entire incremental demand, but have also captured share of the Indian producers. As regards the relative increase in subject imports, it is noted as under:

SN	Particulars	Unit	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)
<b>Import Volume</b>							
1.	China PR	KFKM	7,794	3,064	2,242	8,253	7,895
2.	Indonesia	KFKM	2	52	937	1,601	1,601
3.	Korea RP	KFKM	498	192	404	360	360
4.	Subject Countries - Dumped Imports	KFKM	8,294	3,307	3,583	10,214	9,856
5.	Subject countries – Non – dumped Imports	KFKM					358
6.	Other Countries	KFKM	1,761	672	644	661	661
7.	Total Imports	KFKM	10,055	3,980	4,227	10,875	10,875
8.	Total Demand	KFKM	***	***	***	***	***
	Trend	Index	100	80	72	90	90
<b>Subject imports in relation to</b>							
9.	Indian Production	%	***	***	***	***	***
	Range	%	30 – 40	20 – 30	10 – 20	40 – 50	40 – 50
10.	Total Demand	%	***	***	***	***	***
	Range	%	20 – 30	10 – 20	10 - 20	30 – 40	30 – 40
11.	Total Imports	%	***	***	***	***	***
	Range	%	80 – 90	80 – 90	80 – 90	90 – 100	90 – 100

**Table G 2**

135. From the above, it is evident that the imports from the subject countries have increased by about \*\*\* % in relation to Indian production and by \*\*\* % relative to Indian demand as compared to the base year. The dumped imports have increased about \*\*\* % in relation to Indian production and \*\*\* % relative to Indian demand. In the intervening years of the injury period, the relative share of imports in relation to Indian consumption and production had declined as compared to the base year. However, the imports from the subject countries have continued to maintain a strong relative share in relation to total imports of the subject goods

throughout the injury period and are at their highest level of relative share in the POI. Thus, based on the above analysis, the Authority concludes that the imports of subject goods have increased in absolute as well as relative terms to production and consumption.

**i. Impact of subject goods on the state of the domestic industry**

136. Futong has submitted that the domestic industry is suffering injury only due to the imports from Indonesia whose import share has risen steeply in the POI as compared to the base year. Within the same period, imports from China PR have increased only marginally. Fasten Group has argued that the rise in the volume of imports from the subject countries is due to the sudden increase in demand. It has also stated that in the years 2019 – 2020 and 2020 – 2021 there was a global decline in demand for the subject goods. Fasten Group has also submitted that the share of subject imports in the POI is merely 36 %. With respect to the same, the domestic industry has submitted that the volume of subject imports has increased significantly in the POI not only in absolute terms but also relative to the production and demand of the subject goods. It has further contended that the demand slumped in 2019 – 20 and 2020 – 21 primarily on account of the COVID – 19 pandemic. However, the demand has recovered and is now almost at the base year level. Nevertheless, the increase in demand is being exclusively catered by low-priced imports from the subject countries.
137. It is noted that:
- a. The total demand for the subject goods had declined between the base year and the POI which the applicant as well as other interested parties have attributed to the pandemic as well as the global decline in demand for the subject goods. It is, however, noted that the demand level in the POI period is almost at the level of the base year.
  - b. It is further noted that the volume of dumped imports from the subject countries has significantly increased in the POI as compared to the base year. The volume of the dumped subject goods from the subject countries has also significantly increased in relation to the total Indian production, demand as well as total imports in the POI as compared to the base year.
  - c. It is noted that sales of the applicant have only marginally declined in the POI as compared to the base year. The applicant has explained that it has tried to retain its market share by selling below its cost. The applicant also undertook capacity expansion with a view to increase its market share. Nevertheless, despite selling below its cost and despite increasing its capacity, it has not been able to increase its sales. It is also noted that the applicant is largely focused towards the Indian market, with historically, more than \*\*\* % of its sales being to Indian customers. It has been claimed by the applicant that it does not undertake many export contracts as it already has existing related entities catering to the main export markets. However, due to dumping in the POI, to remain viable, it has increased its export sales to some

extent.

- d. The sales of the supporter have registered a steep decline. The supported has claimed that given the current market situation, its domestic sales had become unviable and so it has opted to export the subject goods on account of the price distortion caused by dumped imports.
- e. It is further noted that in the year 2020-21 when the imports of the PUC had significantly declined due to COVID – 19 pandemic, the sales of the applicant had significantly improved. However, soon after the restoration of normal conditions, the imports of the PUC from the subject countries sharply increased. While the increase in the volume of the PUC from the subject countries in the POI could be attributed to the increase in demand, it is noted that this increase in demand was entirely encapsulated by the imports from the subject countries, thereby leading to volume injury to the applicant.
- f. Futong has argued that the volume injury to the domestic industry is primarily due to imports from Indonesia. It is noted that the volume of imports from Indonesia in the base year was quite low and the same has increased significantly throughout the injury period. While the rate of increase in dumped imports from Indonesia is sharper than China PR, the dumped imports from China PR nonetheless remain at a significantly higher level as compared to Indonesia. At the same time, the volume of dumped subject imports from China PR has also increased significantly, even though the demand for the subject goods has declined in the POI as compared to the base year. The rate of increase is sharp due to the low base year level. Thus, the applicant has suffered injury not only due to the dumped imports from Indonesia but also due to the dumped imports from China PR and Korea RP. In any case, the Authority has already held in para 104 to cumulatively assess the effect of subject imports from the three subject countries.

**ii. Imports made by BCL and Sterlite India**

138. Fasten Group has also submitted that the domestic industry is suffering from self – inflicted injury because of the large quantity of imports made by BCL, the applicant's related party and Sterlite India. HFCL has also submitted that in view of the domestic industry's arguments regarding Sterlite India's fair priced imports from China PR, it has been established that imports from China PR have not been injuring the domestic industry. The applicant has argued for exclusion of Sterlite India from the ambit of domestic industry.
139. It is noted that the Authority has already considered Sterlite India as an ineligible domestic producer as well as an ineligible supporter. Sterlite India is not part of the domestic industry and therefore, imports made by Sterlite India cannot be a ground to hold that injury to the domestic industry is self - inflicted. It is further noted that the applicant has not made any imports of the PUC. BCL is engaged in the manufacturing of optical fiber cables, a

downstream business, in which the PUC is used as a raw material. It is noted that BCL has imported a small quantity of PUC during the POI. It has been submitted by the applicant that BCL is an independent legal entity, whose decision regarding procurement of raw material, i.e., PUC, is based on its own evaluation of market factors and impact on its profitability. Moreover, such imports as stated in para 30 above constitute around \*\*\* % of imports from the subject countries and around \*\*\* % of the total demand in India. Thus, the Authority holds that the imports made by the applicant's related party has not resulted into any self – inflicted injury.

#### **G.II.4 Post – disclosure comments by the other interested parties**

140. The following submissions have been filed by the other interested parties:

- a. There is renewed demand for subject goods since second half of the POI. Any injury suffered by the applicant is not due to dumping but rather due to overall depressed demand of the PUC globally.<sup>163</sup>
- b. The increase in imports from subject countries can be attributed to the significant demand and supply gap in the country. The demand was subdued due to overall depressed state of the industry prior to the POI.<sup>164</sup>
- c. The share of subject imports in demand is merely 36 % which indicates that the domestic industry is fulfilling the major share of the demand. The applicant is nearly operating at 70 % which indicates that it is performing at optimal levels.
- d. Fasten Group's exports to India constitutes less than 2 % of total imports into India and further, the volume is less than 5 % of its total production. Such insignificant portion of sales to India could not injure the domestic industry.<sup>165</sup>

#### **G.II.5 Post – disclosure comments by the domestic industry**

141. No contesting claims or submissions have been filed by the domestic industry with respect to the volume effect of the imports.

#### **G.II.6 Examination by the Authority**

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<sup>163</sup> Paras 24 – 25 and 28 of Fasten Group's Rejoinder Submissions.

<sup>164</sup> Para 27 of Fasten Group's Rejoinder Submissions.

<sup>165</sup> Para 42 of Fasten Group's Rejoinder Submissions.

142. With respect to the volume effect of the dumped imports from the subject countries, Fasten Group has commented that the increase in volume of subject imports from the subject countries is attributable to the demand – supply gap in the domestic market. The Authority does not find any merit in the claim of Fasten Group. There is no demand – supply gap for the PUC in India. It is noted that the capacities of the applicant and supporter are significant enough in itself to cater more than ninety per cent of the demand for the PUC in India. Furthermore, there are several other domestic producers of the PUC which cater to the domestic market.
143. Fasten Group has also claimed that the applicant has suffered injury to the overall depressed demand for the PUC globally. The claim made by Fasten Group is not backed up by information available on record. It is noted that the demand of the PUC has grown significantly in the POI as compared to 2019 – 2020 when such conditions existed and is almost at the base year level. Therefore, it cannot be considered that depressed market conditions were responsible for injury to the domestic industry.
144. Fasten Group has also submitted that the applicant's domestic as well as export sales have improved in the POI. It has also claimed that applicant is more inclined to export its production. It is noted that the applicant's sales have increased in the POI and is almost at the base year level. However, this increase in domestic sales have been achieved at the cost of price injury. As far as the growth in export sales is concerned, it is noted that the export sales of the applicant have increased only in the POI as the applicant was forced to export due to the low-priced imports. It is also noted that despite an increase in export sales, the applicant has made around \*\*\* % of its total sales in the domestic market.
145. Fasten Group has claimed that its share in the volume of total imports is around \*\*\* % of total imports into India and the exported volume of the subject goods constitutes less than \*\*\* % of its production. Therefore, it cannot be considered that imports from Fasten Group could have injured the domestic industry. Fasten Group's imports constitute around \*\*\* % of the total subject imports from the subject countries and total imports from China PR are above the *de minimis* level. The volume threshold under para (iii) of Annexure – II to the AD Rules, 1995 as well as under Art. 5.8 of the WTO Agreement on Anti – dumping is to be seen at country-wide level and not at the level of an individual exporter. Thus, *de minimis* requirements in terms of para (iii) of Annexure II to the AD Rules, 1995 are fulfilled. Further, such imports have been found to be entering into India at dumped prices and the margin of dumping for Fasten Group is also above the *de minimis* level. Therefore, it cannot be accepted that Fasten Group's imports have not injured the domestic industry.

### **G.III Volume effect of the dumped imports on the market share of the domestic industry**

#### **G.III.1 Submission by the other interested parties**

146. The following submissions have been made by the other interested parties with respect to the volume effect of the dumped imports on the market share of the domestic industry:
- The impact of global decline in demand for the subject goods has impacted the applicant's production, sales as well as export sales in 2019 – 2020 and 2020 - 2021.<sup>166</sup>
  - The applicant's sales have improved in the second half of 2020 – 21.<sup>167</sup>
  - The applicant is heavily inclined towards exporting its production. The applicant's export sales have increased twice in comparison to the base year whereas the domestic sales have declined.<sup>168</sup> This would lead to an increase in prices of the subject goods post-imposition of the anti – dumping duties.<sup>169</sup>

### G.III.2 Submissions made by the domestic industry

147. The following submissions have been made by the other interested parties with respect to the volume effect of the dumped imports on the market share of the domestic industry:
- The demand of the subject goods increased in the POI and is almost at 2018-19 level.<sup>170</sup>
  - Despite selling at prices below its cost of production, the applicant has not been able to increase its market share, with incremental demand being met exclusively by the dumped imports from the subject countries<sup>171</sup>.

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

148. The following table shows the market share of the domestic industry and the subject countries in the total Indian demand:

Market Share						
Particulars	Unit	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)
Applicant's sales	%	***	***	***	***	***
Range		15 – 25	5 – 15	5 – 15	15 – 25	15 – 25
Supporter	%	***	***	***	***	***

<sup>166</sup> Para 35 of Fasten Group's Written Submissions.

<sup>167</sup> Para 50 of Fasten Group's Written Submissions

<sup>168</sup> Para 8 (B) (c) of Futong's Written Submissions.

<sup>169</sup> Para 50 of Fasten Group's Written Submissions; Para 44 of Fastens Group's Rejoinder Submissions.

<sup>170</sup> Para 39 of BFL's Written Submissions.

<sup>171</sup> Para 49 of BFL's Written Submissions.

Range		15 – 25	15 – 25	25 – 35	5 – 15	5 – 15
Applicant + Supporter	%	***	***	***	***	***
Range		35 – 45	25 – 35	45 – 55	25 – 35	25 – 35
Sale of Other Indian Producers	%	***	***	***	***	***
Range		25 – 35	55 – 65	35 – 45	35 – 45	35 – 45
Subject Countries – Dumped Imports	%	24%	12%	14%	33%	31%
Range		15 – 25	5 – 15	5 – 15	25 – 35	25 – 35
Subject Countries Non – Dumped Imports	%					1%
Range						0-10
Other Countries	%	5%	2%	3%	2%	2%
Range		0-5	0-5	0-5	0-5	0-5
Total Demand	%	100%	100%	100%	100%	100%

**Table G 3**

149. Fasten Group has argued that the global decline in demand is responsible for the reduction in domestic as well as export sales of the applicant. With the restoration of normalcy in the post-pandemic period, applicant's sales have increased. Fasten Group and Futong have also argued that the applicant's focus is more on the export market rather than the domestic market. With respect to the same, the domestic industry has submitted that even after the increase in demand for the subject goods in the POI, it has not been able to increase its market share. In fact, the incremental demand has been entirely captured by the imports from the subject countries.
150. It is noted that:
- The applicant's market share has marginally increased i.e., by \*\*\* % in the POI as compared to the base year whereas the market share of the supporter has significantly declined. The domestic industry has claimed that it has been able to retain its market share only by selling below its cost of sales.
  - The market share of dumped imports from the subject countries has significantly increased in the POI as compared to the base year.

- c. During the year 2020 – 21, the market share of imports from the subject countries was at 14 %. The domestic industry as well as the other interested parties have accepted that the optical fiber market was facing disruptions due to the pandemic. However, it is noted that with the restoration of normal conditions in the POI, the market share of dumped imports from the subject countries has grown by almost 17 %. During the same period, the growth in market share of the applicant was merely \*\*\* %, and the supporter’s market share significantly declined. The reason behind decline in the market share of the supporter has been explained in para 114 above. It is also to be noted here that the market share of other Indian producers has remained at the same level in the POI as in the previous year. Thus, the growth in market share due to the increase in demand was entirely subsumed by the dumped imports from the subject countries. Neither the applicant nor the Indian industry was able to take full advantage of this growth in demand.

#### **G.IV PRICE EFFECT**

##### **G.IV.1 Submissions by the other interested parties**

151. The following submissions have been made by the other interested parties with respect to the price effect of the dumped imports on the domestic industry:
- a. Price undercutting is one of the most important parameters to establish a causal relationship.<sup>172</sup> There is no price undercutting effect of the subject imports including those from China PR<sup>173</sup> on the price of the applicant’s goods.<sup>174</sup>
  - b. With the increase in the volume of the subject goods, the import price of subject imports from Indonesia has declined.<sup>175</sup>
  - c. The import price of subject imports from Indonesia and Korea RP is significantly below the import price of subject goods from China PR which clearly establishes that subject imports from Indonesia and Korea RP are causing injury to the domestic industry.<sup>176</sup>
  - d. The application did not disclose the price undercutting of the subject imports from China PR was negative.
  - e. The landed value of subject goods exported by Fastens Group is higher than the landed

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<sup>172</sup> Para 3 of Futong’s Rejoinder Submissions.

<sup>173</sup> Para 25 of HFCL’s Written Submissions.

<sup>174</sup> Para 9 (B) of Futong’s Written Submissions; Para 54 of Fasten Group’s Rejoinder Submissions.

<sup>175</sup> Para 8 of Futong’s Written Submissions.

<sup>176</sup> Para 8 (B) of Futong’s Written Submissions.

value of subject goods imported by Sterlite India.<sup>177</sup>

- f. Imports landing at price greater than the imports made by Sterlite India should not be considered as injuring the domestic industry.<sup>178</sup>
- g. The landed value of imports is higher than the price charged by the domestic industry. Therefore, imports do not have any price depressing effect on the domestic industry.<sup>179</sup>
- h. The Authority should examine the variations in the periodic cost of production due to fluctuations in the prices of raw materials for the purpose of ensuring proper determination of price undercutting<sup>180</sup>.

#### **G.IV.2 Submissions by the domestic industry**

152. The following submissions have been made by the domestic industry with respect to the price effect of the dumped imports on the state of the domestic industry:
- a. The price undercutting of the subject goods from Korea RP and Indonesia is positive whereas for China PR is negative on account of the high landed value of the subject goods.<sup>181</sup>
  - b. The high landed value of the subject goods is on account of the imports made by Sterlite India from its joint venture company in China PR under the advance authorization scheme upon which no duty has been paid. Moreover, such imports have been made at higher prices as compared to exports from other producers from China PR.<sup>182</sup>
  - c. The applicant requests that for landed value determination, the duty element should be added only to such imports upon which duty has been paid. That is, to the extent evidence is submitted by the concerned importer showing imports being made without payment of customs duty (i.e., under duty exemption), the addition of a notional customs duty is not warranted, as the same artificially inflates the price at which goods have actually landed in India.<sup>183</sup>
  - d. The applicant submits that producers from China PR have been offering significant post – import discounts or longer credit periods to customers. Therefore, the import prices of the subject goods from China PR are overvalued and therefore, not

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<sup>177</sup> Para 4 of Fasten Group's Written Submissions; Paras 7, 40 of Fasten Group's Rejoinder Submissions;

<sup>178</sup> Paragraph 8 of Futong's Written Submissions.

<sup>179</sup> Para 66 of Fasten Group's Written Submissions; Para 50 of Fastens Group's Rejoinder Submissions.

<sup>180</sup> Para 60 of Fasten Group's Written Submissions.

<sup>181</sup> Para 44 of BFL's Written Submissions.

<sup>182</sup> Para 45 of BFL's Written Submissions.

<sup>183</sup> Para 45 of BFL's Written Submissions.

accurate. The Authority is requested to verify the same.<sup>184</sup>

- e. The subject imports have caused negative price effects on the domestic industry and there is significant price suppression and depression, despite the applicant's efforts to reduce its cost of production.<sup>185</sup>

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

153. The domestic industry and the other interested parties have raised the following issues:

- a. Calculation of appropriate landed value
- b. Whether price undercutting effect exists from the subject countries?

#### **i. Calculation of Landed value**

154. The applicant has argued for the removal of the notional duty element included in advance authorization transactions. It has alleged that the addition of basic customs duty and other elements to the CIF value of imports made under advance authorisation artificially increases the landed value of such imports. The applicant has also filed the bill of entries for all imports made under advance authorization by Sterlite India and M/s Birla Cables Limited.

155. The Authority notes that under the advance authorization scheme, the importer is allowed to import the goods without payment of customs duty or other taxes and charges. It is noted that the addition of basic customs duty, social welfare surcharge and other applicable elements in transactions where such amount has not been paid would artificially inflate the landed value of imports. Thus, the Authority has calculated the landed value by adding the duty element to only such import transactions where such duty has been incurred. The landed value so computed has been mentioned in the 'price undercutting' table below.

#### **Price undercutting effect**

156. The Authority has analyzed the impact of the subject imports on the prices of the domestic industry with reference to price undercutting, price suppression and price depression, if any.

157. The applicant has also alleged producers from China PR offer post – import discounts and longer credit periods to customers. However, no corroborative evidence in this regard has been produced. Accordingly, the Authority has not been able to examine the impact of the alleged post -import discounts or longer credit period arguments forwarded by the applicant due to lack of evidence.

158. Fasten Group and Futong have argued that imports of the subject goods from the subject

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<sup>184</sup> Para 46 of BFL's Written Submissions.

<sup>185</sup> Para 62 of BFL's Written Submissions.

countries are not undercutting the prices of the domestic industry. Specifically, the price undercutting from China PR is negative. Futong has further submitted that the import prices of the subject goods from Indonesia and Korea are significantly below that of China PR and therefore, imports from countries other than China PR are injuring the domestic industry. The applicant has submitted that price undercutting from China PR is negative due to the high landed value of subject goods as a result of imports made by Sterlite India under advance authorisation.

159. With regards to the effect of the dumped imports on prices, it is required to be analysed whether there has been significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress the price or prevent price increases, which otherwise would have occurred in the normal course. The same has been examined in the table below:

<b>PRICE UNDERCUTTING (PU) (POI – Dumped Imports)</b>							
<b>Subject Country</b>	<b>Quantity FKM</b>	<b>CIF ₹/FKM</b>	<b>LV ₹/FKM</b>	<b>NSR ₹/FKM</b>	<b>PU ₹/FKM</b>	<b>PU (%)</b>	<b>PU Range</b>
China PR	7,895	255	280	***	***	***	0 – 10
Indonesia	1,601	235	235	***	***	***	20 – 30
Korea RP	360	251	251	***	***	***	10 – 20
Subject Countries	9,856	251	272	***	***	***	0 – 10

*Table G 4*

160. It is noted that the landed value of imports from the subject countries is below the selling price of the domestic industry and is therefore, undercutting the prices of the domestic industry. It is further clarified that price undercutting from the imports of the subject goods from all three subject countries is positive.

#### **Price suppression / depression effect**

<b>PRICE SUPPRESSION / DEPRESSION</b>						
<b>S.N.</b>	<b>Particulars</b>	<b>Unit</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020 -21</b>	<b>POI (dumped imports)</b>
1	Cost of sales	Rs./FKM	***	***	***	***
	Trend	Index	100	105	68	60
2	Selling Price (NSR)	Rs./FKM	***	***	***	***
	Trend	Index	100	65	56	54
3	Landed Price	Rs./FKM	***	***	***	***
	Trend	Index	100	51	56	40

*Table G 5*

161. Fasten Group has argued that imports from China PR are not depressing the domestic industry's prices as their landed price is higher than the domestic industry's selling price. With respect to the same, the applicant has argued that even after its effort to reduce its cost of production, there is significant prices suppression and depression effect of the imports from the subject countries. It is noted that the landed value of exports from China PR, excluding non – dumped imports, is lower than the domestic industry's cost of production as well as its selling price.
162. It is seen that the cost of sales and net sales realization of the domestic industry, and the landed price of the imports from the subject countries have declined throughout the injury period. The domestic industry has submitted that the decline in cost of sales is primarily due to the decline in the price of the raw material globally i.e., preform. It is, however, noted that the decline in cost of sales has not been commensurate with the decline in the selling price of the domestic industry, i.e., whereas the cost of sales in the POI has declined by Rs. \*\*\*/FKM (as compared to 2018-19), the selling price has declined by Rs. \*\*\*/FKM. At the same time, the landed price of the subject imports has declined by Rs. \*\*\*/FKM. It is, therefore, noted that the imports are depressing the price of the domestic industry, as the rate of decline of the domestic industry's selling price is significantly higher than the rate of decline in its cost of sales.

#### **G.IV.4 Post – disclosure comments by the other interested parties**

163. The following submissions have been made by the other interested parties:
- a. The landed value computation by the Authority by imputing 'NIL' duties to imports made under advance authorization is incorrect. The Authority has in its past

- investigations<sup>186</sup> never segregated advance and non – advance authorization imports for computation of landed value.<sup>187</sup>
- b. The Authority should compute landed value of imports by treating them at par with normal imports in which basic customs duty is added for computation of normal value.<sup>188</sup>
- c. Advance Authorisation Scheme allows duty free import of inputs for export products. The goods imported under advance authorisation scheme do not compete with the goods sold in the domestic market as the price of goods sold in the domestic market includes basic customs duty and other charges. Thus, while computation of weighted average landed value of the subject goods exported from China PR under advance authorisation scheme should be excluded.<sup>189</sup>

#### **G.IV.5 Post – disclosure comments made by the domestic industry**

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

- a. The Authority has observed that the addition of a notional customs duty is not warranted as the addition of basic customs duty, social welfare surcharge and other applicable elements in transactions where such amount has not been paid would artificially inflate the landed value of imports. It is requested that the Authority may confirm the same in the final findings.<sup>190</sup>

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<sup>186</sup> Anti-dumping investigation concerning imports of ‘Acrylic Fibre’, originating in or exported from China PR, Belarus, Ukraine, EU and Peru; Anti-Dumping Duty investigation concerning imports of “Diocetyl Phthalate (DOP)” originating in or exported from Chinese Taipei and Korea RP; 3<sup>rd</sup> Sunset Review Investigation (SSR) concerning imports of Paracetamol originating in or exported from China PR; Sunset review Investigation concerning imports of “Acetone” originating in or exported from the Korea RP, Saudi Arabia and Taiwan; Sunset Review of Anti-Dumping Investigation concerning imports of ‘Phenol’ originating in or exported from South Africa; Anti-dumping duty investigation on the imports of ‘Phthalic Anhydride’ from China PR, Indonesia, Korea RP and Thailand; Anti-dumping investigation concerning imports of Aceto Acetyl Derivatives of aromatic or heterocyclic compounds also known as Arylides from China PR; 4<sup>th</sup> Sunset Review Investigation concerning imports of “Polytetrafluoroethylene” (PTFE) originating in or exported from Russia; Anti-Dumping investigation concerning imports of (Ceftriaxone Sodium Sterile’ originating in or exported from China PR; Anti-Dumping investigation concerning imports of Melamine from European Union, Japan, Qatar and United Arab Emirates; Anti-dumping investigations concerning imports of “Low Density polyethylene (LDPE)” from Qatar, Saudi Arabia, Singapore, Thailand, and United Arab Emirates and United States of America; Sunset Review Investigation concerning imports of “Styrene Butadiene Rubber” originating in or exported from European Union, Korea RP and Thailand; Sunset review investigation of anti-dumping duty on the imports of Monoisopropylamine originating in or exported from China PR; anti-dumping investigation concerning imports of “Ursodeoxycholic Acid (UDCA)” originating in or exported from China PR and Korea RP; Sunset review of anti-dumping duties levied on imports of “High Tenacity Polyester Yarn” originating in or exported from China PR.

<sup>187</sup> Page 8 – 9 of Futong’s Post – Disclosure Comments.

<sup>188</sup> Page 10 Futong’s Post – Disclosure Comments.

<sup>189</sup> Page 10 Futong’s Post – Disclosure Comments.

<sup>190</sup> Para 13 of Corning India’s Post – Disclosure Comments.

- b. Addition of notional customs duty would distort the entire injury analysis. For example, if 100 units of goods have in fact landed in Indian market at Rs. XX, then considering Rs. XX+ 15%, would artificially increase the landed price and thus, distort injury examination.<sup>191</sup>
- c. This approach is consistent with the approach adopted by Authority wherein imports made under various duty exemption schemes are considered at as such values and not at an inflated notional value.<sup>192</sup>

#### **G.IV.6 Examination by the Authority**

165. Futong has disputed the landed value computation. It has argued that the landed value computation by imputing 'NIL' basic customs duty to imports made under advance authorization is incorrect. Futong has further argued that imports made under advance authorization do not compete with goods sold in the domestic market as such goods include basic customs duty and other charges. With respect to the same, the domestic industry has argued addition of notional customs duty to transactions occurring under advance authorization would distort the entire injury analysis. It has further been argued that the same approach has been adopted by the Authority in case of other duty exemption schemes.
166. The reason behind inclusion of imports made under advance authorization for volume and injury analysis can be understood through the following example. Imports in the Indian domestic market can enter through either under advance authorization or through the general route. In case of advance authorization, basic customs duty need not be paid due to exemption of such duties under the scheme. A domestic manufacturer of an end product 'Y' whose raw material is 'X' has the option to either import raw material 'X' under advance authorization or source it from the domestic producers of raw material 'X'. In both these scenarios there is no additional tariff element such as basic customs duty and other border-based customs charges. Thus, if imports of raw material 'X' under advance authorization enter into the domestic market at dumped prices, the manufacturer of end product 'Y' would not prefer to procure raw material 'X' from domestic suppliers unless such domestic suppliers supply their product at a price less or equivalent to the price of dumped product 'X'. Given the absence of additional tariff elements, there exists direct competition between the imports made under advance authorization and domestically produced goods. The low price of imports of raw material 'X' thus effects the market share of the domestic producer of raw material 'X' as well as creates a benchmark effect on the price of the domestic producer and thereby, leading to price injury, in case the domestic producer of raw material 'X' decides to sell its goods to the producer of end product 'Y'. The benchmark effect so created, as explained above, occurs at the price at which such imports land into India (CIF or export price) and not at a notional price (landed value plus basic customs duty and other

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<sup>191</sup> Para 9 of BFL's Post – Disclosure Comments.

<sup>192</sup> Para 10 of BFL's Post – Disclosure Comments.

charges). Therefore, non – inclusion of advance authorization volumes would distort the injury analysis.

167. A concern that may arise here is that such imports may be resold in the domestic market and therefore, basic customs duty on such resale would have to be paid at a later point of time. It is, however, noted here that such imports cannot be resold into the domestic market due to the stringent stipulations such as actual user condition, bank guarantee, confiscation of goods, payment of penalties etc. governing the resale of imports made under advance authorization. Further, there is a robust mechanism for monitoring the usage of such imports. Therefore, addition of notional basic customs duty to the CIF value of such imports on the apprehension of resale into the domestic market does not have sufficient justification. Accordingly, the calculation of landed value of such imports must be done at the CIF price. In view of the above, Futong’s claims regarding error in computation of landed value are not accepted.

## **G.V Economic parameters pertaining to the domestic industry**

### **G.V.A Production, Capacity, Capacity Utilisation and Sales**

#### **G.V.A.I Submissions made by the other interested parties**

168. The following submissions have been made by the other interested parties:
- a. The applicant’s economic factors such as its capacity, production and capacity are in good condition.<sup>193</sup>
  - b. The domestic industry was operating well before the expansion of capacities. However, with the expansion of capacity, the economic parameters have shown a downward trend. Therefore, the Authority should consider 2019 – 2020 as the base year.<sup>194</sup>
  - c. The applicant’s production and capacity utilisation have abruptly declined due to the increase in its installed capacity<sup>195</sup>. If the applicant had not undertaken capacity expansion, the production and capacity utilisation would have increased.<sup>196</sup>
  - d. The applicant is already operating at a capacity of 70 % and does not have the

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<sup>193</sup> Page 3 Government of Indonesia’s Response.

<sup>194</sup> Para 8 of (B) (a) of Futong’s Written Submissions; Para 3 of Futong’s Rejoinder Submissions.

<sup>195</sup> Para 22 of HFCL’s Written Submissions.

<sup>196</sup> Para 8 (C) (a) of Futong’s Written Submissions.

- capacity to cater to the increasing demand of the PUC.<sup>197</sup>
- e. The imports of subject goods from the subject countries are not responsible for the applicant's low – capacity utilisation as the whole optical fiber industry has been witnessing depressing marketing conditions.<sup>198</sup>
  - f. The applicant's production has improved in the second half of 2020 – 21.<sup>199</sup>
  - g. The applicant's claims regarding the inability to increase its capacity utilisation are contrary to the fact on record as it has significantly improved its capacity utilisation by 36 index points in the POI since FY 2020 – 21<sup>200</sup>.
  - h. The non-availability of the imported subject goods during the pandemic restrictions gave the domestic industry an opportunity to increase their sales.<sup>201</sup>
  - i. The applicant has focused on export sales more than its domestic sales. The applicant's export sales have increased twice in comparison to the base year whereas the domestic sales have declined.<sup>202</sup>
  - j. The downstream products manufactured by using the PUC other than G.652 fiber have negligible demand in India and are primarily exported out of India.<sup>203</sup>
  - k. G.657 fibers have negligible share in sales of the PUC as compared to G.652 fibers.<sup>204</sup>
  - l. Almost 80 % of the anti – dumping applications are filed by the domestic industry after the industry takes capacity expansion either in the injury period or in the POI which shows that the purported injury is primarily due to the unjustified increase in capacities. The injury examination should be carried out by splitting injury parameters into two categories – pre – expansion of capacity and post – expansion of capacity.<sup>205</sup>

### **G.V.A.II Submissions made by the domestic industry**

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<sup>197</sup> Para 49 of Fasten Group's Written Submissions.

<sup>198</sup> Para 51 of Fasten Group's Written Submissions; Para 16 of HFCL's Written Submissions.

<sup>199</sup> Para 50 of Fasten Group's Written Submissions.

<sup>200</sup> Para 52 of Fasten Group's Written Submissions; Para 43 of Fasten Group's Rejoinder Submissions; Para 12 of HFCL's Written Submissions.

<sup>201</sup> Para 10 of HFCL's Written submissions.

<sup>202</sup> Para 8 (B) (c) of Futong's Written Submissions.

<sup>203</sup> Para 6 HFCL's of Written Submissions.

<sup>204</sup> Para 8 of HFCL's Written Submissions.

<sup>205</sup> Para 8 (B) (a) of Futong's Written Submissions; Para 3 of Futong's Rejoinder Submissions.

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

- a. Given the fact that only 33% of the towers in India are fiberized and a low per capita fiber consumption of 0.09 FKM, the applicant planned capacity expansion in 2017 – 2018 which was capitalised in early 2019 – 2021 from \*\*\* FKM to \*\*\* FKM.<sup>206</sup>
- b. However, there was a contraction in demand in the intermittent years due to the onset of COVID – 19 pandemic, the slow roll out of Bharat-net and the financial troubles of telecom operators such as Vodafone and Airtel. Due to these reasons, the numerous cable laying projects were kept on hold.<sup>207</sup>
- c. As a consequence of the reasons stated above, the applicant had to close down its production intermittently in the years 2019 – 2020 and 2020 – 21 because of which its capacity utilisation significantly declined.<sup>208</sup>
- d. However, in the POI, with a renewed focus on digital connectivity, the demand has increased significantly despite which the applicant has not been able to increase its capacity utilisation which has fallen to 59 % in the POI from 85 % in the base year.<sup>209</sup>
- e. The applicant's production declined in the years subsequent to the base year for the reasons mentioned above but has increased in the POI due to an increase in demand for the subject goods in the POI.<sup>210</sup>
- f. With respect to the other interested parties' submissions that the applicant has suffered injury due to capacity addition, it is submitted that even Corning India's injury parameters also exhibit a negative trend.<sup>211</sup>
- g. The argument that capacity addition has led to decline in production is devoid of any logic. Further, for injury margin analysis, the impact of increased capacity in the cost of production would be neutralised through normation.<sup>212</sup>

### **G.V.A.III Examination by the Authority**

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<sup>206</sup> Para 47 of BFL's Written Submissions.

<sup>207</sup> Para 47 of BFL's Written Submissions.

<sup>208</sup> Para 47 of BFL's Written Submissions.

<sup>209</sup> Para 47 of BFL's Written Submissions.

<sup>210</sup> Para 47 of BFL's Written Submissions.

<sup>211</sup> Para 6 of BFL's Written Submissions.

<sup>212</sup> Para 8 of BFL's Rejoinder Submissions.

*Non - Confidential*

170. The following table shows the capacity, production, and sales parameters of the applicant as well as the supporter:

SN	Particulars	Unit	2018-19	2019-20	2020-21	POI
<b>A</b>	<b>CAPACITY</b>					
<b>1</b>	Capacity – Applicant	KFKM	***	***	***	***
	Trend	Index	100	156	156	156
<b>2</b>	Capacity – Supporter	KFKM	***	***	***	***
	Trend	Index	100	100	100	100
<b>3</b>	Capacity – Applicant + Supporter	KFKM	***	***	***	***
	Trend	Index	100	117	100	100
<b>B</b>	<b>PRODUCTION</b>					
<b>4</b>	Production – Applicant	KFKM	***	***	***	***
	Trend	Index	100	36	53	109
<b>5.</b>	Production - Supporter	KFKM	***	***	***	***
	Trend	Index	100	82	115	113
<b>6</b>	Production DI + Supporter	KFKM	***	***	***	***
	Trend	Index	100	68	120	131
<b>C</b>	<b>CAPACITY UTILISATION</b>					
<b>7</b>	Capacity Utilization – Applicant	%	***	***	***	***
	Range		80 – 90	20 – 30	20 – 30	50 – 60
<b>8</b>	Capacity Utilization – Supporter	%	***	***	***	***
	Range		80 – 90	70 – 80	80 – 90	90 - 100
<b>9</b>	Capacity Utilization – Applicant + Supporter	KFKM	***	***	***	***
	Range		80 – 90	50 – 60	60 – 70	80 - 90
<b>D</b>	<b>SALES</b>					
<b>10</b>	Domestic Sales – Applicant	KFKM	***	***	***	***
	Trend	Index	100	41	58	99
<b>11</b>	Domestic Sales – Supporter	KFKM	***	***	***	***
	Trend	Index	100	74	154	34
<b>12</b>	Domestic Sales - Applicant + Supporter	KFKM	***	***	***	***
	Trend	Index	100	68	120	131
<b>13</b>	Export Sales – Applicant	KFKM	***	***	***	***

	Trend	Index	100	11	6	204
<b>14</b>	Export Sales – Selling Price – Applicant	Rs./KFKM	***	***	***	***
	Trend	Index	100	75	71	113
<b>15</b>	Export Sales – Supporter	KFKM	***	***	***	***
	Trend	Index	100	94	90	181
<b>16</b>	Export Sales – Supporter	Rs./KFKM	***	***	***	***
	Trend	Index	100	68	120	131
<b>17</b>	Export Sales – Selling Price – Applicant + Supporter	Rs./KFKM	***	***	***	***

**Table G 6**

171. It is noted that:

- a. HFCL has submitted G.657 fibers should be excluded from the purview of injury analysis as they have negligible share sales and the upstream product manufactured using G.657 fibers are mostly exported out of India. As stated above, G.657 fibers are covered within the scope of the PUC and therefore, sales of G.657 fibers have been considered in the injury analysis.
- b. The applicant increased its capacity in the year subsequent to the base year and it has remained stable thereafter. Corning India's capacity has remained stable throughout the injury period.
- c. The applicant's capacity utilisation has declined post - capacity expansion. Futong has argued that the applicant's injury is solely due to the capacity expansion undertaken by it. It has alleged that the applicant's capacity utilisation has declined only after the capacity expansion. Futong has suggested a revision of the base year to 2019 – 2020. It has further requested separate pre-expansion and post-expansion examination of injury parameters. Fasten group has submitted that applicant's capacity utilisation has improved in the POI as compared to the previous year. In this regard, the domestic industry has explained that it had increased its capacity in view of the existing demand and the projected increase in demand, which however was delayed due to a multitude of factors such as the slow roll out of the BHARATNET program and financial troubles of telecom operators such as Vodafone and Airtel and the impending pandemic.
- d. It is noted that the applicant's production has increased in absolute terms in the POI as compared to the base year and therefore, the decline in capacity utilisation in the POI must be examined in that context. If the applicant's capacity utilisation is calculated on the basis of its production in the POI with reference to its capacity in the base year, its capacity utilisation would be around \*\*\*%. However, the applicant

had increased its capacity in the year 2019 – 2020 keeping in mind future growth in demand which was however delayed due to factors mentioned above. This increase in capacity has led to a decline in capacity utilisation.

- e. It is, however, noted that even after the increase in capacity, the installed capacity of the domestic industry is \*\*\* KFKM as compared to the Indian demand of more than \*\*\* KFKM. Considering the data on record, it is seen that the capacity set up by the applicant has primarily been used to meet Indian demand (i.e., more than 85% of production), as against the capacities of the other two main players, i.e. Sterlite India and Corning India which are mainly (about \*\*\* %) catering to captive and export markets. Further, for NIP computation, all fixed costs of the applicant are normated at best capacity utilization. Thus, impact of low- capacity utilization on NIP is created out by dividing the total fixed cost of the applicant by the normated production i.e., derived production at best capacity utilization. It is therefore noted that the capacity increase carried out by the applicant cannot be said to be disproportionate to the Indian demand and therefore, the argument that the injury to the domestic industry is on account of increase in its installed capacity lacks substance. In view of the above, Futong's request for a segregated pre-expansion and post-expansion injury analysis is not warranted.
- f. It is further noted that there was considerable growth in demand in the POI as compared to the previous year (2020 – 2021). However, this growth in demand was largely consumed by the dumped imports from the subject countries. There was a small increase in the market share of the applicant. However, the market share of the supporter significantly declined.
- g. With respect to the contention of Fasten group, it is noted that a comparison of the domestic industry's capacity utilisation in the POI with 2020 – 2021 would be inappropriate as there was a global decline in demand of the subject goods in 2020 – 2021 due to COVID – 19, due to which significant capacities of the applicant remained underutilised. In fact, Fasten group has itself made submissions that the optical fiber market was marred with depressing conditions in the period between the base year and the POI.
- h. Further, upon analysis of the production numbers of the domestic industry, it is noted that the production of the domestic industry has increased in absolute terms in the POI as compared to the base year. The production of the domestic industry declined in 2019 – 2020 and 2020 – 2021 due to the global decline in demand and subsequently, COVID – 19 pandemic. However, it has improved in the POI as compared to the base year. Corning India's capacity utilization has also fluctuated during the injury period and has remained at high levels during the POI. It is noted that Corning India has been able to maintain the same because of the significant export sales it has made to its related parties.

- i. However, despite increased production, there has not been any commensurate increase in domestic sales of the said companies, which has remained below base year levels. The combined capacity, production, domestic sales and capacity utilization of the applicant and Corning India are as below:

SN	Particulars	Unit	2018-19	2019-20	2020-21	POI
1.	Combined Domestic Sales	KFKM	***	***	***	***
	Trend	Index	100	59	88	66
2.	Capacity Utilization towards domestic sales	%	***	***	***	***
	Trend	Index	100	50	75	56

**Table G 7**

- j. From the above, it can be seen that the capacity utilized towards domestic sales has declined significantly in the POI as compared to the base year as well as the previous year. It has been submitted that since these are continuous plants, the optimum capacity utilization for this industry is around \*\*\* %, as the cost associated with reducing production or restarting the plant is very high and therefore, the same is not a viable option. The applicant has explained that it had, therefore, taken a conscious call of selling below cost to optimise its capacity utilization to the extent possible and to remain afloat in the market. Similarly, owing to the significant price pressure in the Indian market, Corning India has diverted its production towards more remunerative export sales (i.e., the average export price of Rs. \*\*\*/FKM as against the average domestic selling price of Rs. \*\*\*/FKM), which has resulted in steep decline in its domestic sales. It is also noted that a very significant portion of such sales was made to Corning India's related parties. Therefore, the mere absence of a decline in the production of the applicant or supporter in the POI cannot be considered indicative of a lack of injury due to dumped imports.
- k. Fasten group has submitted that the applicant's production has improved in the second half of 2020 – 2021. Futong has argued that the applicant is focused more on export sales as compared to the domestic market. It is noted that the applicant's production has increased in the POI as compared to the previous years including the base year. The applicant has explained that the same is due to an increase in demand for the subject goods. Corning India's data also exhibit a similar trend. Applicant's domestic sales are marginally below the figures in the base year and Corning India's domestic sales have drastically declined in the POI as compared to the previous years

as well as the base year. As noted above, the pressure and depressing effects of prices of subject imports have led the applicant and the supporter to divert their sales towards export markets where the prices fetched are more remunerative and which explains the rise in export sales of the subject goods.

- l. Fasten Group has submitted that the applicant lacks the capacity to cater to the Indian demand. It is noted that the applicant and supporter have significant capacity to cater to a substantial part of the Indian demand. Further, the Indian demand can also be fulfilled through other Indian producers as well as the fair imports of the subject goods. In fact, the installed capacity of the three Indian producers, i.e., the applicant, Corning India and Sterlite India is higher than the Indian demand. Nonetheless, it is noted that the inability of a domestic producer to fulfil Indian demand cannot be a reason to allow unperturbed entry of injurious imports into the Indian market.

#### **G.V.A.IV Post – disclosure comments by the other interested parties**

172. The other interested parties have made the following submissions:

- a. The applicant's production as well as domestic and export sales have improved in the POI. Further, it is evident from the facts on record that the applicant is more inclined to export its production rather than catering to the domestic market. Imposition of duty would lead to hike in domestic prices.<sup>213</sup>
- b. The applicant's low-capacity utilisation in the POI is due to depressed market conditions for the PUC globally during the POI. Thus, low – capacity utilisation of the applicant cannot be solely attributed to imports from the subject countries.<sup>214</sup>

#### **G.V.A.V Post – disclosure comments by the domestic industry**

173. No contesting claims or submissions have been made by the domestic industry.

#### **G.V.A.VI Examination by the Authority**

174. Fasten Group has submitted that the applicant's domestic as well as export sales have improved in the POI. It has also claimed that applicant is more inclined to export its production. It is noted that the applicant's sales have increased in the POI due to growth in demand and is almost at base year level. However, this increase in domestic sales have been

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<sup>213</sup> Paras 30 – 31 of Fasten Group's Rejoinder Submissions.

<sup>214</sup> Paras 32 – 33 of Fasten Group's Rejoinder Submissions.

achieved at the cost of suffering price injury. As far as the growth in export sales is concerned, it is noted that the export sales of the applicant have increased only in the POI due to the low-priced imports.

175. Nevertheless, such export sales constitute less than ten per cent of the applicant's production and the major part of the production have been sold in the domestic market. Further, for reasons mentioned in paragraph 178 below, it is unlikely that the applicant would increase its export sales post – imposition of anti – dumping duties. Moreover, with respect to Fasten Group's submissions regarding increase in domestic prices of the subject goods post imposition of anti – dumping duties, it is noted that there are multiple producers of the 'like article' in India. In view of the ensuing competition amongst such producers, it is unlikely that imposition of anti – dumping duties would lead to a hike in prices above the fair value.
176. Fasten Group has commented that applicant's low – capacity utilization is due to depressed market conditions globally in the POI. It is noted that this fact is contrary to the claims made by Fasten Group in its written and rejoinder submissions, wherein Fasten Group has submitted that FY 2019 – 2020 was affected due to depressed market conditions. It is further noted that as per the figures pertaining to demand on record, it is noted that the demand is almost the base year level.

### **G.V.B Market Share**

#### **G.V.B.I Submissions made by the other interested parties**

177. The other interested parties have made the following submissions:
- a. The domestic industry's market share has increased upwards in 2019 – 20 as well as in the POI and therefore, there is no injury to the domestic industry.<sup>215</sup> Domestic sales relative to demand shows the applicant occupies 64% of the market demand in India.<sup>216</sup>

#### **G.V.B.II Submissions made by the domestic industry**

178. The domestic industry has made the following submissions:
- a. The market share of the subject goods from the subject countries has increased steeply from 24 % in the base year to 36 % in the POI and is at the highest level, whereas the share of the article produced by the applicant is still at 19%.<sup>217</sup>
  - b. The applicant has been able to retain its market share only by taking a conscious

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<sup>215</sup> Para 11 of HFCL's Written Submissions.

<sup>216</sup> Para 13 of HFCL's Written Submissions.

<sup>217</sup> Para 41 of BFL's Written Submissions.

decision to sell the article produced by it below the cost.<sup>218</sup>

### G.V.B.III Examination by the Authority

179. The following table shows the market share of the domestic industry, other domestic producers, and subject imports:

Market Share					
Particulars	Unit	2018-19	2019-20	2020-21	POI
Applicant's sales	%	***	***	***	***
Range		15 – 25	5 – 15	5 – 15	15 – 25
Supporter	%	***	***	***	***
Range		15 – 25	15 – 25	25 – 35	5 – 15
Applicant + Supporter	%	***	***	***	***
Range		35 – 45	25 – 35	45 – 55	25 – 35
Sale of Other Indian Producers	%	***	***	***	***
Range		25 – 35	55 – 65	35 – 45	35 – 45
Subject Countries	%	24	12	14	33
Range		15 – 25	5 – 15	5 – 15	25 – 35
Other Countries	%	5	2	3	2
Range		0-5	0-5	0-5	0-5
Total Demand	%	100%	100%	100%	100%

**Table G 8**

180. HFCL has argued that the applicant's market share has moved upwards as compared to 2019 – 2020 in the POI and therefore, there is no injury to the applicant. It is noted that the applicant's sales have marginally increased in the POI as compared to the base year and have increased in comparison to the injury period years. It is also noted that Corning India's domestic sales have significantly declined. It is further noted that there has been a significant increase in the market share of the dumped subject goods from the subject countries in the POI even though the demand for the subject goods has declined in the POI as compared to the base year. Thus, the applicant was not able to take full advantage of the increase in Indian consumption.
181. It is noted that the dumped imports invoked distinctive responses from the applicant and supporter. While the applicant lowered its selling price to maintain its market share, the supporter's domestic sales have declined and its export sales have increased. Further, the capacity utilisation of the supporter has also increased in the POI. The applicant suffered price injury to maintain its market share. At the same time, Corning India, the supporter, suffered volume losses to as it was not able to adjust to the price pressure. In this regard, it is noted that more than \*\*\* % of export sales of Corning India have been to its related parties which are optical fiber cable manufacturers. The applicant has submitted that its plant was

<sup>218</sup> Para 41 of BFL's Written Submissions.

established to specifically cater to the Indian demand. Unlike Corning India, it did not have the option to export a significant chunk of its production as there are several joint venture units of its related party, Furukawa Electric Co., in those markets which were already catering to demand in such markets.

#### **G.V.B.IV Post – disclosure comments by the other interested parties**

182. No contesting submissions or issues have been raised by any of the interested parties.

#### **G.V.C Profitability, Return on Capital Employed and cash profits**

##### **G.V.C.I Submissions made by the other interested parties**

183. The other interested parties have made the following submissions:

- a. The Authority should analyse the long-term and short-term loans of the applicant as they impact the profitability of the organisation.<sup>219</sup>
- b. The applicant's figures pertaining to the commission, discount rebates and freight have increased by 794 %. The Authority should verify the same.<sup>220</sup> Such a high increase in the figures indicates poor business decisions and the injury is, therefore, self – inflicted.<sup>221</sup>
- c. The reason behind the negative cash profits has been explained by the applicant in its financial statement<sup>222</sup>.

<sup>219</sup> Para 15 of HFCL's Written Submissions.

<sup>220</sup> Para 54 of Fasten Group's Written Submissions.

<sup>221</sup> Para 55 of Fasten Group's Written Submissions.

<sup>222</sup> Para 56 of Fasten Group's Written Submissions.

*“ During the year under review, revenue from operations of the Company stood at Rs. 1162.47 Millions as against the revenue of operations of Rs. 925.33 Millions for the previous year. This reflects an approximate increase of around 26% since previous financial year. Your Company has suffered a net loss of Rs. 104.65 Millions during the financial year under review as against loss of Rs. 302.62 Million during the previous financial year, which also shows significant improvement since the previous fiscal year, despite the challenging business conditions. **The loss during the year under report as witnessed by the Company can be attributed to the depressed market conditions globally and subdued demand for Company's product which has led to a detrimental effect on the profitability of the Company, besides drastic effects of Covid-19 on the economy/markets as a whole.***

*The financial year 2020-21 can be termed as an unprecedented year since the detection of Coronavirus Disease 2019 (Covid-19), declared a global pandemic by the World Health Organisation in March 2020, has been tormenting the individuals and businesses alike as it continues its effect globally. Most of the countries have imposed complete or partial lockdowns which brought about an overall slowdown in the global economy, India has been no different. This situation led to an extremely subdued demand for your Company's products during the year under review. The second half of the year saw slight improvement in conditions wherein the economy opened up gradually, resulting in the revival of demand. However, the strong resurgence of new strains of Covid-19 virus in several parts of the world including India and second/third wave*

- d. The imports cannot be faulted for a low return on investment. Due to depressed market conditions, the applicant was not able to earn an adequate return on its investment. During the POI, the applicant's return on investment has improved.
- e. The country -wise import data provided by the applicant also establishes that there was a decline in global prices of the subject goods in years subsequent to the base year and has thereafter increased in the POI.<sup>223</sup>
- f. A 22% return on capital employed is not proper in light of the CESTAT judgement in *Bridge Stone Tyre Manufacturing (Thailand) v. Designated Authority*<sup>224</sup> and *Hyosung Corporation vs. Designated Authority*<sup>225</sup>.
- g. It is submitted that the Authority should consider the applicant's past return from a period when there was no dumping and adopt the same as a reasonable return to arrive at non – injurious price.<sup>226</sup>
- h. The Authority should follow the European Union's practice and judgement of the European Court in *European Fertilizer Manufacturer's Association (EFMA) v. Council*<sup>227</sup> for allowing reasonable return in the computation of non – injurious price.<sup>228</sup>
- i. The Authority should rely on the annual report of the applicant as it has been producing 100 % optical fibers.<sup>229</sup> As per the annual reports of the applicant, it was earning reasonable profits prior to 2019 – 20 and for unknown reasons, the applicant's profits declined in the year 2019 – 2020. The applicant's performance improved in 2020 – 21.<sup>230</sup>
- j. The Authority should examine the abrupt increase (100 to 305) in the applicant's interest cost in 2019 – 2020. Though interest cost has declined subsequently, it

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*since early 2021 has once again dampened the overall economic spirit and momentum which has started impacting in last quarter of the year. **Therefore, owing to renewed restrictions and lockdowns in place in a several geographies, market continues to be uncertain disrupting operations, planning, financing, supply chains of optical fiber and optical fiber cable manufacturers.***”

<sup>223</sup> Para 19 of HFCL's Written Submissions.

<sup>224</sup> 2011 SCC OnLine CESTAT 3694 (Para 28).

<sup>225</sup> Anti – dumping Appeal No. 06 of 2007 (Paras 2 and 3).

<sup>226</sup> Para 12 of Futong's Written Submissions.

<sup>227</sup> [1999] ECR II – 3291. The Court held that: "It follows that the profit margin to be used by the Council when calculating the target price that will remove the injury in question must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports. It would not be consistent with Articles 4(1) and 13(3) of the basic regulation to allow the Community industry a profit margin that it could not have expected if there were no dumping."

<sup>228</sup> Para 12 of Futong's Written Submissions.

<sup>229</sup> Para 8 (C) (c) of Futong's Written Submissions.

<sup>230</sup> Para 8 (C) (c) of Futong's Written Submissions.

remains above the base year level.<sup>231</sup>

- k. The average capital employed has declined with the increase in the installed capacity which is not proper.<sup>232</sup>

### G.V.C.II Submissions by the domestic industry

184. The domestic industry has made the following submissions:

- a. Despite making several efforts at reducing its cost of production, the applicant has not been able to make profitable sales in the POI due to the dumped imports of the subject goods from the subject countries.<sup>233</sup>
- b. The applicant has not been able to earn returns on its investment.<sup>234</sup>
- c. With respect to the claim that 22 % ROCE is inappropriate because of the low rate of interest on debt, it is submitted that cost is incurred on both debts as well as equity, and the cost on equity element is much higher. Considering this, a return of 22 % on ROCE is not appropriate for the computation of non – injurious price.
- d. The Hon'ble Tribunal in several of its decisions<sup>235</sup> has upheld the practice of granting a return of 22 % on the capital employed<sup>236</sup>.
- e. None of the other interested parties have brought any fact on record that warrants justification for deviation from the Authority's consistent practice.<sup>237</sup>

### G.V.C.III Examination by the Authority

185. The following table lays down the figures pertaining to the financial parameters of the domestic industry and the supporter:

SN	Particulars	Unit	2018-19	2019-20	2020-21	POI
<b>A</b>	<b>COST OF SALES</b>					
<b>1</b>	Cost of sales – Applicant	Rs./FKM	***	***	***	***

<sup>231</sup> Para 8 (C) (d) of Futong's Written Submissions.

<sup>232</sup> Para 8(C) (f) of Futong's Written Submissions.

<sup>233</sup> Para 50 of BFL's Written Submissions.

<sup>234</sup> Para 53 of BFL's Written Submissions.

<sup>235</sup> Qingdao Doublestar Tire Industrial & Co. Ltd. v. Union of India ( 2018 (364) E.L.T. 852 (Tri. - Del.) ; Perstorp Chemicals GmbH & Ors. vs Designated Authority (2017 (357) E.L.T. 397 (Tri. - Del.) ; Gujarat Fluorochemicals Ltd. vs Designated Authority 2017 (345) E.L.T. 144 (Tri. - Del.); Tangshan Sanyou Group Hong Kong International Trade Co. Ltd. vs Union of India.

<sup>236</sup> Para 16 of BFL's Rejoinder Submissions.

<sup>237</sup> Para 17 of BFL's Rejoinder Submissions.

	Trend	Index	100	105	68	60
<b>2</b>	Cost of Sales – Supporter	Rs./FKM	***	***	***	***
	Trend	Index	100	80	65	65
<b>3</b>	Cost of sales - Applicant + Supporter	Rs./FKM	***	***	***	***
	Trend	Index	100	87	65	63
<b>B</b>	<b>SELLING PRICE</b>					
<b>1</b>	Selling Price – Applicant	Rs./FKM	***	***	***	***
	Trend	Index	100	65	56	54
<b>2</b>	Selling Price- Supporter	Rs./FKM	***	***	***	***
	Trend	Index	100	72	56	55
<b>3</b>	Selling Price - Applicant + Supporter	Rs./FKM	***	***	***	***
	Trend	Index	100	69	55	56
<b>C</b>	<b>PROFIT/(LOSS)</b>					
<b>1</b>	Profit/(Loss) – Applicant	Rs./FKM	***	(***)	(***)	(***)
	Trend	Index	100	(25)	(69)	(67)
<b>2</b>	Profit/(Loss) – Supporter	Rs./FKM	***	(***)	(***)	(***)
	Trend	Index	100	(25)	(69)	(85)
<b>3</b>	Profit/(Loss) - Applicant + Supporter	Rs./FKM	***	(***)	(***)	(***)
	Trend	Index	100	(25)	(69)	(73)
<b>4</b>	Profit/(Loss) – Applicant	Rs. Lacs	***	(***)	(***)	(***)
	Trend	Index	100	(167)	(50)	(13)
<b>5</b>	Profit/(Loss) – Supporter	Rs. Lacs	***	(***)	(***)	(***)
	Trend	Index	100	(19)	(79)	(32)
<b>6</b>	Profit/(Loss) - Applicant + Supporter	Rs. Lacs	***	(***)	(***)	(***)
	Trend	Index	100	(95)	(64)	(22)
<b>D</b>	<b>PBIT</b>					
<b>1</b>	PBIT – Applicant	Rs. Lacs	***	(***)	(***)	***
	Trend	Index	100	(118)	(26)	16
<b>2</b>	PBIT – Supporter	Rs. Lacs	***	(***)	(***)	(***)
	Trend	Index	100	(18)	(77)	(32)
<b>3</b>	PBIT - Applicant + Supporter	Rs. Lacs	***	(***)	(***)	(***)
	Trend	Index	100	(73)	(49)	(5)
<b>E</b>	<b>Cash Profits</b>					
<b>1</b>	Cash Profits – Applicant	Rs. Lacs	***	(***)	***	***
	Trend	Index	100	(63)	0	29
<b>2</b>	Cash Profits – Supporter	Rs. Lacs	***	(***)	(***)	(***)
	Trend	Index	100	0	(42)	(11)

<b>3</b>	Cash Profits - Applicant + Supporter	Rs. Lacs	***	(***)	(***)	***
	Trend	Index	100	(40)	(15)	10
<b>F</b>	<b>ROCE</b>					
<b>1</b>	ROCE – Applicant	%	***	(***)	(***)	***
	Trend	Index	100	(134)	(32)	4
<b>2</b>	ROCE – Supporter	%	***	(***)	(***)	(***)
	Trend	Index	100	(20)	(68)	(60)
<b>3</b>	ROCE - Applicant + Supporter	%	***	(***)	(***)	(***)
	Trend	Index	100	(83)	(49)	(8)

*Table G 9*

186. It is seen that applicant's unit cost of sales as well as unit selling price has declined over the years and are at its lowest values in the POI. The decline in cost of sales is primarily on account of the decline in prices of the raw material i.e., preform. A similar trend is visible in the figures of Corning India.
187. The unit selling price of the applicant went below the unit cost of sales in 2019 – 2020 but marginally improved in 2020 – 2021, when the volume of imports from the subject countries had significantly declined. However, with the increase in the volume of low – priced dumped imports from the subject countries, the applicant's unit selling price has fallen below the unit cost of sales in the POI. A similar trend is visible in Corning India's figures. It is also noted that the decline in the unit selling price of the subject goods is not commensurate with the decline in the unit cost of sales. It is further noted that the landed value of dumped imports from the subject countries was also at the lowest level in the POI. The domestic industry has explained that to retain its market share, the domestic industry has sold the like article below the cost of sales which has impacted its profitability. It is also noted that the unit selling price has remained below the unit cost of production.
188. As mentioned above, Futong has argued that the applicant has been facing injury due to its decision of increasing its installed capacity. In this regard, it is noted that the supporter, Corning India has not made any additions to its installed capacity and yet, it has registered losses in the POI.
189. It is noted that the applicant's cash profits, PBIT, as well as ROCE, have significantly declined since the base year. Even with the restoration of demand in the POI, the applicant has not been able to achieve profits.
190. With respect to the negative cash profits, the Authority notes that the cash profit during the POI, though significantly inadequate, was not negative. The reference made to negative cash profit due to subdued demand in the financial statement for FY 2019-20 and FY 2020 – 2021, relates to the market situation in FY 2019-20 and FY 2020 - 2021 and not the POI.

191. Fasten Group has submitted that the applicant's figures pertaining to discounts, freights and commissions have been high. The Authority has verified the discount/rebate and freight expenses. It has been submitted by the domestic industry that it had to lower its selling price by giving discounts/rebates, to match the low-priced subject imports from the subject countries. The price pressure from the subject imports is evident from the fact that the import price during the POI (i.e., Rs. \*\*\*/FKM) was even significantly lower than the discounted selling price (i.e., Rs. \*\*\*/FKM) of the domestic industry. It is, therefore, noted that the discounts/rebates provided by the domestic industry are on account of low-priced imports and not any poor financial decision by the domestic industry.
192. With respect to the abrupt increase in the applicant's interest cost in 2019 – 2020, the Authority has examined the interest being claimed by the applicant, and only such interest cost, as found reasonable, has been taken into consideration for the determination of the non – injurious price (NIP). The Authority notes that NIP has been determined as per the provision of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules, 1995.
193. Fasten Group has argued that the applicant has not been able to earn an adequate return on its investment due to the depressed market conditions and not because of the imports. It has also asserted that the applicant's return has improved in the POI.

<b>F</b>	<b>ROCE</b>					
<b>1</b>	ROCE – Applicant	%	***	(***)	(***)	***
	Trend	Index	100	(134)	(32)	4

**Table G 10**

194. It is noted that the applicant's return on capital employed has declined over the years and has registered a negative return in 2019 – 2020 and 2020 – 2021. The applicant as well as the other interested parties, as stated above, have accepted that the aforesaid period was impacted due to the depressed market conditions and the impact of COVID– 19. However, the applicant's ROCE in the POI is significantly low as compared to the base year. The POI was not impacted by the global decline in demand. Even in the Indian market, the demand for the subject goods has almost reached the base year level. Thus, it cannot be said that the applicant's ROCE in the POI is impacted by the depressed market conditions.
195. Futong has submitted that the decline in average capital employed even after the increase in the installed capacity is improper. It is noted that the decline in capital employed even after the increase in the installed capacity is on account of change in the useful life of the assets carried by the domestic industry in its books.
196. As far as HFCL's submissions regarding the impact of short and long - term loans are concerned, it is noted that all loans and advances have been examined and have been allowed to the extent appropriate.

**G.V.C.IV Post – disclosure comments by the other interested parties**

197. The other interested parties have made the following submissions:
- a. The Authority has provided vague reasons for high increase in commissions, rebates, freight, and discounts of the applicant which indicate poor commercial decisions on part of the applicant and therefore, injury, if any, is self – inflicted.<sup>238</sup>
  - b. The applicant’s low return on investment is due to depressed market conditions and imports are not responsible for the same.<sup>239</sup>

**G.V.C.V Post – disclosure comments by the domestic industry**

198. No contesting issues or submissions have been raised by the domestic industry.

**G.V.C.VI Examination by the Authority**

199. Fasten has contended that the disclosure statement does not clarify the reason behind the high increase in rebates, freight and discount of the applicant. Fasten Group has argued that such high increase in rebates, freight and discounts are reflective of the applicant’s poor commercial decision and therefore, injury, if any, is self – inflicted. As stated in paragraph 188 above, it is noted that the applicant has explained that it had to offer discounts to its customers to match the low-priced dumped imports of the PUC from the subject countries in order to retain its market share.
200. As regards the contention that applicant’s low return of investment is due to depressed market conditions, it is noted that demand for the subject goods in the POI had increased and was almost at base year level and therefore, it cannot be considered depressed market conditions were responsible for the low return on investment of the applicant.

**G.V.D Inventories****G.V.D.I Submissions made by the other interested parties**

201. The other interested parties have made the following submissions:
- a. Piling up of inventory is not in itself an indicator of injury and poor economic performance<sup>240</sup> as has been held by CESTAT in *Bridge Stone Tyre Manufacturing*

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<sup>238</sup> Para 34 of Fasten Group’s Post – disclosure Comments.

<sup>239</sup> Para 38 of Fasten Group’s Post – disclosure Comments.

<sup>240</sup> Para 51 of Fasten Group’s Written Submissions; Para 45 of Fasten Group’s Written Submissions.

*(Thailand) v. Designated Authority*<sup>241</sup>.

### **G.V.D.II Submissions made by the domestic industry**

202. The domestic industry has made the following submissions:

- a. The inventory of the applicant has considerably increased during the POI.<sup>242</sup>

### **G.V.D.III Examination by the Authority**

203. The following table shows the inventory figures of the applicant and the supporter:

SN	Particulars	Unit	2018-19	2019-20	2020-21	POI
1	Average Stock – Applicant	KFKM	***	***	***	***
	Trend	Index	100	137	133	228
2	Average Stock – Supporter	KFKM	***	***	***	***
	Trend	Index	100	141	149	78
3	Average Stock - Applicant + Supporter	KFKM	***	***	***	***
	Trend	Index	100	141	146	104

**Table G 11**

204. It is noted that the average stock of the applicant has increased significantly in the POI even though there was sufficient demand for the subject goods in the POI. The applicant has explained that due to the significant volume of low-priced imports of the subject goods from the subject countries, it has not been able to sell the 'like article' even after offering them at prices less than its cost of sales. The growth in Indian demand for the subject goods during the POI was entirely absorbed by the dumped imports from the subject countries due to which the inventories have grown. Corning India's inventories had steadily grown but have declined in the POI. However, it is noted that Corning India has made significant export sales in the POI due to which its inventories have significantly reduced.
205. Fasten Group has submitted that the mere piling up of inventory cannot be an indicator of injury. The Authority notes that injury examination and injury to the domestic industry are peculiar to the facts of every investigation. Neither the absence nor presence of injury on one of the parameters or several parameters can be considered dispositive or determinative of injury to the domestic industry.

<sup>241</sup> 2011 SCC OnLine CESTAT 3694 (para 28).

<sup>242</sup> Para 51 of BFL's Written Submissions.

**G.V.D.IV Post – disclosure comments**

206. No contesting issues or submissions have been raised by any of the interested parties.

**G.V.E Employment, Productivity and Wages****G.V.E.I Submissions made by the other interested parties**

207. The other interested parties have made the following submissions:

- a. The productivity of the applicant has increased sharply during the POI as compared to the base year. The trend of productivity is even better than the average industry norm as provided in the application.<sup>243</sup>
- b. There has been an improvement in productivity per employee. The improvement in productivity despite a decline in employment shows that a reduction in employment is not an indicator of injury.<sup>244</sup>

**G.V.E.II Submissions made by the domestic industry**

208. The domestic industry has made the following submissions:

- a. There is no significant decline in the levels of employment as it is not appropriate to vary the workforce in the short run. However, given the injury being faced by the applicant on account of the dumped imports from the subject countries, it would eventually lead to the closure of the production facilities impacting the livelihood of thousands of individuals.<sup>245</sup>

**G.V.E.III Examination by the Authority**

209. The following tables shows the figures pertaining to wages, employment, and productivity of the applicant:

<b>Employment, Wages and Productivity</b>						
<b>SN</b>	<b>Particulars</b>	<b>Unit</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>POI</b>
<b>A</b>	<b>Wages</b>					
<b>1</b>	Wages – Applicant	Rs. Lacs	***	***	***	***
	Trend	Index	100	96	83	94
<b>2</b>	Wages - Supporter	Rs. Lacs	***	***	***	***
	Trend	Index	100	99	110	116

<sup>243</sup> Para 8 (C) (e) Futong's Written Submissions.

<sup>244</sup> Para 61 Fasten Group's Written Submissions.

<sup>245</sup> Para 52 BFL's Written Submissions.

3	Wages - Applicant + Supporter	Rs. Lacs	***	***	***	***
	Trend	Index	100	98	104	111
<b>B</b>	<b>EMPLOYMENT</b>					
1	Employment – Applicant	Nos	***	***	***	***
	Trend	Index	100	92	80	79
2	Employment – Supporter	Nos	***	***	***	***
	Trend	Index	100	100	99	98
3	Employment - Applicant + Supporter	Nos	***	***	***	***
	Trend	Indexed	100	97	93	92
<b>C</b>	<b>PRODUCTIVITY</b>					
1	Productivity per day – Applicant	KFKM/day	***	***	***	***
	Trend	Index	100	36	53	109
2	Productivity per day – Supporter	KFKM/day	***	***	***	***
	Trend	Index	100	83	95	108
3	Productivity per day - Applicant + Supporter	KFKM/day	***	***	***	***
	Trend	Index	100	68	82	108
4	Productivity per employee – Applicant	KFKM/no employees	***	***	***	***
	Trend	Index	100	83	96	110
5	Productivity per employee – Supporter	KFKM/no employees	***	***	***	***
	Trend	Index	100	83	96	110
6	Productivity per employee - Applicant + Supporter	KFKM/no employees	***	***	***	***
	Trend	Index	100	70	88	117

210. It is seen employment in the domestic industry has continuously declined and is at its lowest level in the POI. The number of employees involved in the production of the subject goods in the domestic industry has declined by \*\*\* %. The level of employment has also reduced for the Indian industry. The amount of wages paid by the domestic industry has also declined in the POI which might be attributable to the decline in the number of employees. The amount of wages paid by Corning India has increased in the POI due to remunerative export sales made by it.
211. Productivity per day of the applicant declined during 2019-2020 as compared to the base year due to the decline in production of the subject goods consequent to a decline in demand

for the subject goods. However, with the subsequent growth in demand, the productivity has improved since 2020 – 2021 and is above the base year level in the POI.

#### **G.V.E.IV Post – disclosure comments by the other interested parties**

212. The other interested parties have made the following submissions:

- a. Slight reduction in employment is not an indicator of injury given the fact that there has been a positive improvement in productivity per employee.<sup>246</sup> The improvement in productivity establishes that the applicant has been able to achieve more with fewer resources.<sup>247</sup>

#### **G.V.E.V Post – disclosure comments by the domestic industry**

213. No contesting submissions or issues have been raised by the domestic industry.

#### **G.V.E.VI Examination by the Authority**

214. Fasten Group has argued that there has been an increase in productivity per employee of the applicant despite reduction in number of employees which establishes improvement in the performance of the domestic industry. It is noted that optical fiber industry is a capital-intensive industry and therefore, slight reduction in employment would not affect the productivity of the industry. Nevertheless, it is noted that there has been a positive growth in productivity parameters of the applicant. However, this growth is due to the increase in production of the ‘like article’ by the applicant. Further, this must be seen in correlation with the increase in the inventory of the applicant. Thus, even though the applicant increased its production due to which its productivity has enhanced, the applicant was not able to sell its ‘like article’ in the market due to presence of low -priced dumped imports of the subject goods.

#### **G.V.F Growth**

215. The growth in terms of production, capacity utilization, domestic sales volume, inventories, profits, cash profits and return on investment is as per below table:

<b>SN</b>	<b>Particulars</b>	<b>Unit</b>	<b>2019-20</b>	<b>2020-21</b>	<b>POI</b>	<b>POI compared to the base year</b>

<sup>246</sup> Para 36 of Fasten Group’s Rejoinder Submissions.

<sup>247</sup> Para 37 of Fasten Group’s Rejoinder Submissions.

<b>A PRODUCTION</b>						
<b>1</b>	Production-Applicant	%	(***)	***	***	***
<b>2</b>	Production-Supporter	%	(***)	***	***	***
<b>3</b>	Production-Combined	%	(***)	***	***	***
<b>B DOMESTIC SALES</b>						
<b>1</b>	Domestic Sales-Applicant	%	(***)	***	***	(***)
<b>2</b>	Domestic Sales – Supporter	%	(***)	***	(***)	(***)
<b>3</b>	Domestic Sales – Combined	%	(***)	***	(***)	(***)
<b>C PROFIT/LOSS (RS. LACS)</b>						
<b>1</b>	Profit/Loss-Applicant	%	(***)	(***)	(***)	(***)
<b>2</b>	Profit/Loss-Supporter	%	(***)	(***)	(***)	(***)
<b>3</b>	Profit/(Loss)-Combined	%	(***)	(***)	(***)	(***)
<b>D ROCE</b>						
<b>1</b>	ROCE-Applicant	%	(***)	***	***	(***)
<b>2</b>	ROCE – Supporter	%	(***)	***	***	(***)
<b>3</b>	ROCE - Combined	%	(***)	***	***	(***)
<b>D INVENTORY</b>						
<b>1</b>	Inventory-Applicant	%	***	(***)	***	***
<b>2</b>	Inventory-Supporter	%	***	***	(***)	(***)
<b>3</b>	Inventory-Combined	%	***	***	(***)	***
<b>E MARKET SHARE</b>						
<b>1</b>	Market Share-Applicant	%	(***)	***	***	***
<b>2</b>	Market Share-Supporter	%	(***)	***	(***)	(***)
<b>3</b>	Market Share-Combined	%	(***)	***	(***)	(***)

Table G 13

216. From the above, it is seen that most of the parameters have shown growth in the POI as compared to the previous year. As has been noted above, the market in the previous year was distorted due to COVID - 19 pandemic. However, as compared to the base year wherein the

demand for the subject goods was almost at the same level as in the POI, almost all parameters have registered negative growth in POI. Furthermore, the domestic industry has not been able to realise the full potential of the improvement in the market in the POI since incremental growth in demand has been entirely subsumed by dumped imports from the subject countries.

### **G.V.G Magnitude of dumping**

217. As noted above in Table F 1, the dumping margin of the subject goods from the subject countries is above the *de minimis* limit and is significant. It is further noted that the dumping margin of the cooperating producers from China PR is also above the *de minimis* limit and is significant.

### **G.V.H Ability to raise capital investment**

218. The applicant has submitted that all Indian producers except Sterlite India are importing preform for producing optical fibre. These producers are in process of making plans to set up preform manufacturing plants and ancillary plans. However, the operationalisation of such plans has become increasingly difficult and rather impractical as the production of the resulting product (optical fibre) itself has become unviable due to the increased quantities of dumped subject goods from the subject countries. The Indian industry is not able to fetch adequate prices due to which its ability to raise capital investment has been severely impacted.<sup>248</sup>
219. It is noted that with the continuous losses being suffered by the domestic industry, its ability to raise capital has been adversely affected. The Authority notes that given the rising demand for the PUC in the country, the applicant had made significant investments in plant and machinery in 2019-20. However, despite an increase in demand for the subject goods in the POI, the applicant's performance has deteriorated considerably, and thereby its ability to raise capital investments in the future has diminished.

### **G.V.I Miscellaneous Submissions on Injury**

#### **G.V.I.I Submissions made by the other interested parties**

220. The other interested parties have made the following submissions:
- a. The Authority should analyse the injury parameters of all domestic producers of the like article in India.<sup>249</sup> Para (i) of Annexure II to the Rules requires the Authority to determine injury based on an objective examination of the impact of subject imports

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<sup>248</sup> Para 13 of BFL's Post – Disclosure Comments.

<sup>249</sup> Para 6 of Fasten Group's Written Submissions; Para 17 of Fasten Group's Rejoinder Submissions.

on all domestic producers of like articles<sup>250</sup>.

- b. Aksh Optic Fiber and Finolex Technologies have been performing well and have, therefore, not participated in the present investigation<sup>251</sup>. Aksh and Finolex have not suffered injury as they are not able to sell in the domestic market at higher prices than the present domestic industry.<sup>252</sup>
- c. The Authority in *Anti – dumping investigation Polyester Staple Fiber from China PR, Indonesia, Malaysia, and Thailand* had recommended non - imposition of anti-dumping duties as it had found that the imports and supplies of other domestic producers were shaping the price structure<sup>253</sup> in the market.<sup>254</sup>
- d. The CRU Report of September 2022 shows that the prices of optical fiber are already at elevated levels and can further increase. The domestic prices are at parity to import prices.<sup>255</sup>
- e. The Authority should analyse post – POI data which would establish that there has been considerable improvement in the parameters of the domestic industry.<sup>256</sup>
- f. The Authority should reject the applicant’s submissions concerning the threat of material injury.<sup>257</sup> The threat of material injury did not form part of the initiation notification and the applicant has raised this claim at the stage of oral hearing for the first time.<sup>258</sup>

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<sup>250</sup> Para 7 of Fasten Group’s Written Submissions.

<sup>251</sup> Para 6 of Fastens Group’s Written Submissions; Para 17 of Fastens Group’s Rejoinder Submissions.

<sup>252</sup> Para 6 of Fasten Group’s Written Submissions; Para 17 Fastens Group’s Rejoinder Submissions.

<sup>253</sup> Para 99 of Anti – dumping investigation concerning imports of Polyester Staple Fiber from China PR, Indonesia, Malaysia and Thailand F.No. 14/49/2016 – DGAD.

“ j. Factors affecting Domestic Price

99. The examination indicates that there is a healthy demand in India for the subject goods. Even though Domestic Industry holds a major share of the market, they claim that import prices are directly affecting the prices of the domestic industry in the domestic market. However, the fact that the other Indian producer, who holds a major market share, is also an extremely important player impacting the market prices of the subject goods. The information given by the user industry shows that the prices of M/s Reliance Industries Ltd. (non petitioner producer) are consistently higher than the import prices and still they hold majority share of Indian demand. It is noted that the landed value of subject goods from subject countries are below non-injurious price of the domestic industry. Further, landed value of PUC from subject countries had suppressed / depressed the prices of the Domestic Industry causing financial losses to them. The imports of the product under consideration from countries other than subject countries are minor in quantities and not injuring the domestic industry as the prices offered by these countries are significantly higher. Demand for the product is showing an increase trend and, therefore, could not have been a factor responsible for price depression and suppression faced by the domestic industry. In view thereof, the imports and supplies of the other producer (non-petitioner producer), are shaping the price structure of the subject goods of domestic industry in India.”

<sup>254</sup> Para 7 of Fasten Group’s Written Submissions; Para 18 of Fasten Group’s Rejoinder Submissions.

<sup>255</sup> Para 20 of HFCL’s Written Submissions.

<sup>256</sup> Para 16 of HFCL’s Written Submissions

<sup>257</sup> Para 24 of HFCL’s Written Submissions.

<sup>258</sup> Para 5, 7 of Fasten Group’s Written Submissions; Para 47 of Fasten Group’s Rejoinder Submissions.

**G.V.I.II Submissions made by the domestic industry**

221. The following submissions have been made the domestic industry:

- a. The Authority had recommended a provisional duty of 25 % in the previous safeguard investigation on the subject goods and further definitive duty of 10 % was recommended through the final findings. However, the recommendations were not accepted by the Central Government. Several interested parties in the impugned investigation had asserted that anti – dumping was the more appropriate measure considering the facts of the case.<sup>259</sup>
- b. The information submitted by the applicant as well as the supporter clearly demonstrates that the domestic industry has been suffering significant price and volume injury on account of the increase in dumped imports of the subject goods from the subject countries.<sup>260</sup>
- c. The Authority should also consider Corning India’s data for injury analysis<sup>261</sup>.
- d. The imports of the subject goods in the post – POI period has increased significantly and has even surpassed the POI levels.<sup>262</sup>
- e. There exist significant overcapacities in the subject countries as compared to their domestic demand.<sup>263</sup>
- f. The European Union has imposed anti – dumping duty on the imports of optical fiber cable from China PR which is manufactured from optical fiber i.e., the PUC which has led to a considerable increase in the stock of the PUC with the producers from China PR.
- g. Consequently, producers from China have exported 30% of their production of the PUC into India.<sup>264</sup>

**G.V.I.III Examination by the Authority**

222. Fasten Group has submitted that the Authority should examine the impact of the dumped

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<sup>259</sup> Paras 23 – 27 of BFL’s Written Submissions.

<sup>260</sup> Para 28 of BFL’s Written Submissions.

<sup>261</sup> Para 12 of Corning India’s Rejoinder Submissions.

<sup>262</sup> Para 54 of BFL’s Written Submissions. (Also See Chart in para 54 of BFL’s Written Submissions.)

<sup>263</sup> Para 56 of BFL’s Written Submissions. (Also see Chart below para 57 of BFL’s Written Submissions.)

<sup>264</sup> Para 59 of BFL’s Written Submissions. (Also see figure 6 of BFL’s Confidential Written Submissions.)

subject goods on all domestic producers as per the requirement laid down in Annexure - II. It has also been submitted that Aksh Optifiber and Finolex Technologies have not participated in the present investigation as they have been performing well. The applicant has also requested for considering Corning India's data in the injury analysis. In this regard, it is noted that the initiation notification along with non – confidential version of the application was circulated to other domestic producers at the stage of initiation. Further, during the investigation, Aksh Optifiber and Finolex Technologies were informed and data regarding injury parameters was sought from them. However, neither of the two producers has submitted the pertinent information. Nevertheless, non – participation in investigation cannot be construed to mean that those producers have been performing well or that they are not facing injury. Corning India and Sterlite India have supported the application filed by the applicant. Due to the significant volume of imports made by Sterlite India, Sterlite India has been treated as an ineligible producer. Accordingly, the injury analysis has been based on the information provided by eligible Indian producers i.e., the applicant and Corning India.

223. Both Fasten Group and HFCL have argued that the application filed by the applicant did not contain allegations pertaining to 'threat of injury'. It is noted that the applicant's allegations concerning 'threat of injury' did not form part of its application. Accordingly, the Authority has not considered the same.
224. HFCL has requested the analysis of post – POI data. It is to be noted that the injury analysis in the original investigation is based on the POI data. Therefore, post – POI data has not been considered.

#### **G.V.IV Post – disclosure comments by the other interested parties**

225. The other interested parties have made the following submissions:
- a. The Authority must specify the manner in which trends have been mentioned and the methodology used for determining ranges for injury period and the POI.<sup>265</sup>

#### **G.V.IV Post – disclosure comments by the domestic industry**

226. The domestic industry has made the following submissions:
- a. The applicant requests for imposition of duty on *ad valorem* basis and relies on Office Memorandum F. No. 4/15/2018-DGTR (part-III) dated 18th June, 2019<sup>266</sup>, wherein it was

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<sup>265</sup> Para 26 of Fasten Group's Rejoinder Submissions.

<sup>266</sup> <https://www.dgtr.gov.in/sites/default/files/Methodology%20regarding%20various%20forms%20of%20ADDCVD.pdf>

noted that the Authority may, depending on the facts of the case, recommend imposition of anti-dumping duties as fixed duty, *ad - valorem* duty or on a reference prices basis<sup>267</sup>.

- b. The Customs Tariff Heading 9001 1000 applicable to PUC, is not a dedicated tariff heading and applies to other products, including optical fibre cable, fibre bundles etc. as well. The unit of measurement specified for the said heading is in kilograms.<sup>268</sup> There is no requirement under the applicable customs tariff heading to declare the quantity for the subject goods in FKM (fiber kilometer), monitoring of imports per FKM would be difficult, cause administrative inconvenience and consequently lead to circumvention.<sup>269</sup>
- c. The PUC is always sold commercially in FKM and not in kilograms in the Indian telecommunication market of India as well as in international market. Practically, for all transactions, the industry uses FKM/KME as the unit of measurement including imports / exports and not kilogram. There is no accepted or universal FKM to kilogram conversion available, as for the same FKM, weight in kilogram could be entirely different for multiple reasons such as size or quality of packaging (i.e., spool).<sup>270</sup>
- d. Given the fact that the unit of measurement for the PUC under Customs Tariff (i.e., kilogram) is different from the unit of measurement (i.e., FKM) at which trade happens, it is requested that this is a fit case of imposition of duty on *ad-valorem* basis.<sup>271</sup>
- e. Since the dumping and injury are determined in FKM while the Customs Tariff Act uses a different unit of measurement, to overcome any implementation issues, Corning India requests the Authority to recommend the anti-dumping duty on *ad-valorem* basis as a percentage of the CIF value. The imposition of anti-dumping duty in fixed rate would not serve the purpose and not be in the interest of the domestic industry.<sup>272</sup>
- f. In the recent investigation conducted by the European Union on imports of optical fiber cables, countervailing duties have been imposed on an *ad - valorem* basis. Similarly, China PR has imposed anti - dumping duties on the subject goods on an *ad - valorem* basis.<sup>273</sup>

#### **G.V.I.VI Examination by the Authority**

227. Fasten Group has requested the Authority to disclose the methodology of arriving at trends and determination of ranges. The trend figures are arrived at by dividing the values of a

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<sup>267</sup> Para 19 of BFL's Post – Disclosure Comments.

<sup>268</sup> Para 16 of BFL's Post – Disclosure Comments.

<sup>269</sup> Para 22 of BFL's Post – Disclosure Comments.

<sup>270</sup> Para 17 of BFL's Post – Disclosure Comments.

<sup>271</sup> Para 20 of BFL's Post – Disclosure Comments.

<sup>272</sup> Para 23 of BFL's Post – Disclosure Comments.

<sup>273</sup> Para 21 of BFL's Post – Disclosure Comments.

particular field by the base year and then multiplying the same by 100. The ranges are chosen on the basis of a figure +/- 10 from the actual figure.

228. The applicant as well as the supporter have requested imposition of anti – dumping duties on an *ad - valorem* basis on the ground that there is a difference in the unit of measurement under the Customs Tariff Act, 1975 and the manner in which the PUC is commercially traded. The Authority notes that recommendation of anti – dumping duties on *ad valorem* basis may lead to under invoicing and evasion of duties, thereof.

#### **G.VI Injury Margin**

229. The Authority has determined non-injurious price (NIP) for the domestic industry on the basis of the principles laid down in Annexure III to the AD Rules, 1995, as amended. The NIP of the like article has been determined by adopting the information/data relating to the cost of production provided by the domestic industry for the period of investigation. For the determination of the non-injurious price, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with respect to utilities. The best utilization of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III to the AD Rules, 1995.
230. The landed value for China PR has been determined by adding a 15 % basic customs duty to the CIF value of the subject goods on which such duty has been paid. Further, as explained in paras 154 – 155 and 165 – 166 above, the landed value in case of imports made under the advance authorization, the basic customs duty and social welfare surcharge has been computed as zero. The landed value for the subject goods from Korea RP and Indonesia is the CIF value of such subject goods. As no basic customs duty is applicable on the imports of the subject goods from these two subject countries, no additional duties or surcharges have been added.
231. The injury margin has been computed as the difference between the landed value of the subject goods and the non – injurious price of the like article manufactured by the domestic industry and has been mentioned in the table below:

<b>INJURY MARGIN TABLE</b>						
<b>S.No.</b>	<b>Name of the Producer</b>	<b>Landed Value (₹/FKM)</b>	<b>NIP (₹/FKM)</b>	<b>Injury Margin (₹/FKM)</b>	<b>Injury Margin (%)</b>	<b>Injury Margin Range</b>
<b>China PR</b>						
1.	Hangzhou Futong Communication Technology Co., Ltd.	***	***	***	***	10 – 20
2.	Jiangsu Fasten Photonics Co., Ltd.	***	***	***	***	0 – 10
3.	Jiangsu Sterlite Fiber Technology Co., Ltd.	***	***	***	***	0-10
4.	Any other producer	***	***	***	***	10 – 20
<b>Korea RP</b>						
1.	Any producer	***	***	***	***	30 - 40
<b>Indonesia</b>						
2.	Any producer	***	***	***	***	20 - 30

## **G.VII CAUSAL LINK AND NON – ATTRIBUTION ANALYSIS**

### **G.VII.1 Submissions by the other interested parties**

232. The other interested parties have made the following submissions with respect to the causal link between the dumped imports and the injury to the domestic industry:

- a. The applicant's 2020 – 21 financial statement states that it is not backed by cost-effective 'preform' supply arrangements which are commensurate with the prevailing price of optical fiber.<sup>274</sup>

<sup>274</sup> Para 59 of Fasten Group's Written Submissions; Para 49 of Fasten Group's Rejoinder Submissions.

- b. Fastens group commenced their exports to India in April 2021 and therefore, it has not caused injury to the domestic industry.<sup>275</sup>
- c. The applicant is suffering due to depressed demand for the subject goods in the domestic market.<sup>276</sup>
- d. The applicant's performance was impacted in the year 2019 – 2020 and 2020 – 2021 due to a decline in demand<sup>277</sup> on account of several factors<sup>278</sup>. The optical fiber industry's conditions have improved in second half of 2021 because of improvement in demand<sup>279</sup> on account of several factors.<sup>280</sup>
- e. The injury to the domestic industry cannot be attributed to China PR in light of the higher prices of the subject imports from China PR in comparison to other subject countries, negative price undercutting from China PR and significant imports made by Sterlite India.<sup>281</sup>
- f. The Appellate Body in *US – Hot Rolled Steel* has ruled<sup>282</sup> that “in order to comply with the non – attribution language in the provision<sup>283</sup>, investigating authorities must make an appropriate assessment of the injury caused to the domestic industry by other known factors, and they must separate and distinguish the injurious effects of the dumped imports from the injurious effects of those factors. This requires a satisfactory explanation of the nature and extent of the injurious effects of other factors, as distinguished from the injurious effects of the dumped imports.”<sup>284285</sup>
- g. The application fails to address a number of critical factors which has impacted the domestic industry independently from the alleged injury faced from the subject countries. Such reasons include internal problems, depressed market conditions, subdued demand for the applicant's product and the impact of COVID – 19 as

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<sup>275</sup> Para 63 of Fasten Group's Written Submissions.

<sup>276</sup> Para 66 of Fasten Group's Written Submissions.

<sup>277</sup> Rollout of 5G, slower digitization, troubled telecom sector, pandemic and shut down, exceptionally heavy monsoons liquidity crunch being faced by public sector units, delay in announcement of BHARATNET projects and slower than expected fiber to the home (FTTH) deployment

<sup>278</sup> Para 37 of Fasten Group's Rejoinder Submissions.

<sup>279</sup> Telecom relief packages announced by the Central government, expected rollout of 5G and higher penetration of smartphones.

<sup>280</sup> Paras 36,51 of Fastens Group's Rejoinder Submissions.

<sup>281</sup> Para 8 of Futong's Rejoinder Submissions.

<sup>282</sup> Paras 223 – 226, Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R (adopted on 23<sup>rd</sup> August 2001).

<sup>283</sup> Article 3.5 of the WTO Agreement on Anti-dumping.

<sup>284</sup> Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R (adopted on 23<sup>rd</sup> August 2001).

<sup>285</sup> Para 10 of Futong's Written Submissions.

mentioned in the applicant's annual report.<sup>286</sup>

### **G.VII.2 Submissions made by the domestic industry**

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

- a. The following factors<sup>287</sup> establish that the domestic industry has been suffering injury only due to the subject imports:
  - i. The volume of imports from the subject countries constitutes 93 % of the total volume of imports.
  - ii. The demand for the subject goods has increased and therefore, there is no contraction in demand.
  - iii. The pattern of consumption remains unchanged.
  - iv. There are no trade restrictive practices.
  - v. There are change in the technologies of production of the product.
  - vi. The applicant does not produce any other goods than the PUC.
  
- b. The following factors<sup>288</sup> demonstrate causal link between the subject imports from the subject country and injury faced by the domestic industry:
  - i. The volume of dumped imports has increase in absolute as well as relative terms.
  - ii. The increase in volume of the dumped subject goods in the POI is significantly in excess of the Indian demand.
  - iii. Despite an increase in demand for the subject goods in the POI, and availability of capacity with the applicant, it has not been able to increase its market share.
  - iv. The subject imports have caused negative price effects on the domestic industry and there is significant price suppression and depression, despite the applicant's efforts to reduce its cost of production.
  
- c. With reference to the arguments made regarding the applicant's financial report for 2019 – 2020, it is submitted that the year 2020 -21 was affected due to the pandemic. Prior to this period i.e., from Q3 of 2019 – 20, the market of the PUC was temporarily affected due to several factors as stated above but, in the POI, the market has normalized and demand has also increased.<sup>289</sup>

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

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<sup>286</sup> Para 10 of Futong's Written Submissions; Para 9 of Futong's Rejoinder Submissions.

<sup>287</sup> Para 63 of BFL's Written Submissions.

<sup>288</sup> Para 62 of BFL's Written Submissions.

<sup>289</sup> Para 9 of BFL's Rejoinder Submissions.

234. Para (v) of Annexure – II to the AD Rules, 1995 requires the Authority to establish that the domestic industry is suffering injury due to the dumped imports. At the same, the Authority is required to examine other known factors other than the dumped imports that could have impacted the performance of the domestic industry so that the injury caused by other known factors is not attributable to the dumped imports of the subject goods. The relevant factors in this respect include the volume of subject goods not sold at dumped prices, contraction in demand or changes in the pattern of consumption, trade restrictive practices, changes in technology, the export performance of the domestic industry and the productivity of the domestic industry. The aforementioned factors have been examined below:

**i. Volume of subject goods not sold at dumped prices**

235. The entire volume of imports from the subject countries, including the imports made by Sterlite India have been found to be sold at dumped prices. Further, the volume of imports from the non – subject countries constitute a very insignificant percentage of the total volume of imports of the subject goods and are at prices higher than the dumped imports from the subject countries.

**ii. Contraction in demand**

236. It is noted that the demand for the subject goods declined after the base year. Futong and Fasten Group have submitted that the demand for the subject goods had declined in 2019 – 2020 and 2020 - 2021 due to which the applicant suffered injury. It is, however, that the demand for the subject goods has normalised in the POI and is almost at the base year level. Neither Fasten Group nor Futong has contested that the demand for the subject goods in the POI was affected due to external factors. In fact, Fasten Group has itself asserted that the demand in the POI has normalised.

**iii. Change in pattern of consumption**

237. None of the interested parties has argued or brought forth any evidence which establishes a change in the pattern of consumption which could have impacted the performance of the domestic industry.

**iv. Trade restrictive practices**

238. None of the interested parties have argued or brought forth any evidence regarding the existence of any trade restrictive practices which could have impacted the performance of the domestic industry.

**v. Development in technology**

239. None of the interested parties have argued or brought forth any evidence to demonstrate advancement in technology in the manufacturing of the PUC which could have impacted the performance of the domestic industry. The investigating team has found the production process of the cooperative producers from China PR as well as the applicant to be similar.

**vi. Export performance of the domestic industry**

240. The applicant's export performance has improved in the POI as compared to the base year and therefore, it cannot be said that the applicant has been suffering due to a decline in its export performance.

**vii. Performance of other products of the domestic industry**

241. It is noted that the applicant only manufactures the PUC as has been defined in the present investigation. The data pertaining to such products have been used in the present investigation. Therefore, it cannot be said that the applicant's performance with respect to other products has impacted the production or sales of the like article manufactured by the applicant.

**viii. Productivity of the domestic industry**

242. The following table shows the productivity figures of the domestic industry:

<b>PRODUCTIVITY</b>						
<b>1</b>	Productivity per day – Applicant	KFKM/day	***	***	***	***
	Trend	Index	100	36	53	109
<b>2</b>	Productivity per employee – Applicant	KFKM/no employees	***	***	***	***
	Trend	Index	100	83	96	110
<b>3</b>	Production – Applicant	KFKM	***	***	***	***
	Trend	Index	100	36	53	109

*Table G 16*

243. It is seen that the productivity per day as well as productivity per employee has moved in tandem with the production. Therefore, it cannot be said that the decline in the productivity of the applicant has impacted its performance.

244. Additionally, the Authority has examined the following factors raised by the other interested parties:

**ix. Lack of cost – effective 'preform supply arrangement'**

245. Fasten Group has asserted that the applicant's performance has declined as it lacks cost – effective preform supply arrangement. Fasten Group has relied on the applicant's 2020 -

2021 financial statement for making this claim. The Authority has perused the impugned financial statement which states the following:

*“Indian market continues to witness lower pricing from countries like China, South Korea, Indonesia, etc. which continued to supply optical fiber to Indian customers at low prices, adversely impacting operations of all standalone optical fiber manufacturers which are not backed by cost effective Preform supply arrangements which commensurate with prevailing price of optical fiber. The Domestic optical fiber manufacturers also approached Government of India for implementation of necessary measures to safeguard their interest, which could not achieve the desired results.”*

246. It is noted that the applicant’s financial statement is merely making a statement about the Indian producers and not specifically about its production capability. Furthermore, the applicant has explained that this statement stands true only for such Indian producers which lack cost-effective preform supply arrangement. The statement suggests that the Indian manufacturers were not able to compete with producers from the subject countries as the prices of subject goods exported by them were even less than the cost of procurement of preform by Indian manufacturers. In any case, the financial statement does not pertain to the POI. It is also noted that the cost of preform has reduced over the injury period. It is noted that the applicant as well as the supporter have cost-effective preform supply arrangements through long terms contracts with their joint venture partner/ parent company. Further, from the preform import data it is noted that the price at which the applicant has procured preform is one of the lowest in India. The Authority also notes that the cost of material of the participating exporters is much higher than the applicant. Therefore, it cannot be considered that the applicant lacks cost-effective preform supply arrangement due to which its performance has deteriorated.

**x. Depressed global market conditions and impact of COVID – 19**

247. Futong has argued that the applicant’s performance has declined due to depressed global market conditions as well as the impact of COVID – 19. It has relied on the applicant’s 2020 – 2021 Annual Report for making this claim. The applicant has also accepted that the demand for the subject goods in 2019 – 2020 and 2020 – 2021 was impacted due to the decline in the global market conditions and COVID – 19 respectively. However, the demand of the subject goods in India as well as the world has improved significantly in the POI. Therefore, it cannot be said be that global market conditions or COVID – 19 has impacted the performance of the domestic industry during the POI.

**xi. Higher import prices from China PR**

248. Futong has submitted that the import price of the subject goods from China PR is higher than the import price from the other subject countries and therefore, it cannot be said that imports from China PR are injuring the domestic industry. For reasons stated above, the

Authority has cumulatively assessed the impact of the subject goods from the subject countries and has found them to be at dumped as well as injurious price. The Authority has also determined the individual dumping and injury margin for the cooperative producers from China PR and has found them to be at dumped and injurious price.

#### **G.VII.4 Post – disclosure comments by the other interested parties**

249. The other interested parties have made the following submissions:

- a. The domestic industry is not suffering injury due to imports. The applicant has suffered injury due to depressed market conditions and inability to meet the increasing demand for optical fiber.<sup>290</sup>

#### **G.VII.5 Post – disclosure comments by the domestic industry**

250. No contesting submissions or issues have been raised by the domestic industry.

#### **G.VII.6 Examination by the Authority**

251. Fasten Group has claimed that the domestic industry is suffering injury due to depressed market conditions. It is noted that the demand in the POI is almost at the base year level and therefore, it cannot be accepted that the domestic industry has suffered injury due to depressed market conditions.

### **G.VIII FACTORS ESTABLISHING CAUSAL LINK**

252. The Authority after examining the factors enumerated above holds that the domestic industry has not suffered injury in the POI due to other factors. Further, the following factors show that the injury to the domestic industry is due to subject imports:

- a. The volume of dumped imports from the subject countries has increased in the POI as compared to the injury period in absolute terms as well as in relation to the production and consumption of the subject goods in India. As a consequence of such an increase in the volume of low-priced dumped subject goods, the domestic industry has not been able to sell the like article manufactured in significant quantities in the domestic market.
- b. As a consequence of the increase in the volume of dumped subject goods, the inventories of the domestic industry have piled up.
- c. Further, despite having significant capacity, the applicant has not been able to

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<sup>290</sup> Para 40 of Fasten Group's Post – disclosure Comments.

increase its market share of the subject goods in the POI.

- d. Due to the low-priced imports of the subject goods from the subject countries, the applicant has been selling the like article manufactured by it below its cost of sales. As a result, the domestic industry has been forced to sell at losses.
- e. The low-priced subject imports have depressed the prices of the like article manufactured by the applicant.
- f. The adverse impact of the dumped imports on the selling price of the domestic industry has led to a significant loss, decline in cash profit and a significant reduction in the return on capital employed.
- g. The growth of the domestic industry has become negative in respect of several economic parameters.
- h. The incremental demand for the subject goods in the POI has been largely captured by the imports from the subject countries due to which the applicant has not been able to take advantage of the growth in Indian consumption.

## **H. INDIAN INDUSTRY ISSUES**

### **H.I Submissions made by the other interested parties**

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

- a. With the growth in demand of optical fibers, the imposition of anti – duties will restrict the supply of the PUC as the domestic industry is not equipped to cater to the steep increase in demand.<sup>291</sup>
- b. Imposition of anti – dumping duties on the imports optical fiber would lead to imports of optical fiber cables, leading to closure of cable manufacturing units which would not be able to compete with imports.<sup>292</sup>
- c. Imposition of anti – dumping duties would frustrate India’s digital infrastructure development and would be against national interest.<sup>293</sup>
- d. The basic customs duty on the imports of subject goods from China PR has increased to 15 % whereas there is no basic customs duty on the subject imports from Indonesia and South Korea<sup>294</sup>.
- e. The applicant has claimed that impact of 10 % of anti -dumping duties on telecom projects would be approximately 3%. However, it has not disclosed calculations

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<sup>291</sup> Para 37 Fasten Group’s Written Submissions.

<sup>292</sup> Para 71 Fasten Group’s Written Submissions.

<sup>293</sup> Para 72 Fasten Group’s Written Submissions.

<sup>294</sup> Para 73 Fasten Group’s Written Submissions.

regarding the same.<sup>295</sup>

- f. There is severe shortage of optical fiber cables. Imposition of anti – dumping duties would lead to monopolisation of the PUC’s market by the domestic industry.<sup>296</sup>

## **H.II Submissions made by the domestic industry**

254. The following submissions have been made on behalf of the domestic industry:

- a. India is one of the fastest-growing markets for digital consumers with over 117 crore telecom subscribers and 82.9 crore internet subscribers, making it one of the largest digital communications markets in the world.
- b. Currently only 33% of the towers in India are fiberised, compared to the 70% in South Korea and 80%-90% in the U.S., Japan, and China. Moreover, India's per capita fibre consumption is only 0.09 FKM, as compared to 1.35 FKM in Japan, 1.34 FKM in the U.S. and 1.3 FKM in China.
- c. The imposition of anti-dumping duties is in the larger interest of Indian public, as being critical to nation’s digital infrastructure, if the domestic industry for SMOF is wiped out, the dependence on imported fibre alone would not be in the nation’s interest.
- d. The impact of anti – dumping duties would be negligible on the ultimate users.
- e. The anti – dumping duties are imposed under Section 9A of Customs Tariff Act, 1975, which itself has been incorporated in law in public interest, with a view to protect Indian industries from the adverse effects of dumping. As such, neutralization of dumping and granting adequate protection to the Indian industries is in public interest.
- f. Optical fiber is critical component for development of the digital infrastructure of the country. Therefore, it is necessary for India to have an active manufacturing setup to meet the requirement of the sector. This is also in alignment with Government of India’s vision of an Atmanirbhar-Bharat.<sup>297</sup>
- g. Indian manufacturers have invested more 5000 crores during the last ten years to build the optical fiber industry, which is sufficient to cater to the Indian demand.<sup>298</sup>
- h. The domestic manufacturers can produce high quality products which comply with international standards as required under Environmental Impact Assessment/ Telecommunications Industry Association Requirements and the Underwriters Laboratories guidelines which shows that production of subject goods in India is at par with global standards.<sup>299</sup>

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<sup>295</sup> Para 25 Fasten Group’s Written Submissions.

<sup>296</sup> Para 21 HFCL’s Written Submissions.

<sup>297</sup> Para 18 of Corning India’s Post – Disclosure Comments.

<sup>298</sup> Para 14 (a) of BFL’s Post – Disclosure Comments.

<sup>299</sup> Para 14 (b) of BFL’s Post – Disclosure Comments.

- i. It is in public interest to have a strong, competitive domestic production of single mode optical fibre.<sup>300</sup> The domestic supply is very well placed to cater to the domestic demand of OFC manufacturers. Moreover, the imposition of anti-dumping duties would not affect the option of importing from other non-subject countries. Thus, domestic user industry for SMOF in India has sufficient alternatives to de-risk their operations.<sup>301</sup>
- j. There has been concerns around continuing dependence on import for telecommunication and networking equipment. This is for both economic and security reasons.<sup>302</sup>
- k. The TRAI Report acknowledges the fact that the local manufacturing in the country at present is suffering severely due to lack of protection from cheaper imports which accounts for a vast majority of the market demand. It suggests that imposition of dumping duty would offset the effect of dumping and would be beneficial for promoting manufacturing in India.<sup>303</sup>
- l. Digital infrastructure is critical asset for any nation. Several countries such as the United States of America, Australia and European Union have imposed barriers and certification requirements to block usage of fiber produced in China PR. The Telecom Equipment and Services Export Promotion Council has recommended<sup>304</sup> usage of security – carve outs<sup>305</sup>.

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

255. Trade remedial measures are intended to restore equal competitive opportunities in the domestic market by ensuring level playing field to domestic producers through imposition of appropriate duties against unfair imports of the subject goods. At the same time, the Authority is cognizant of the fact that the impact of such duties is not limited to only the domestic producers of the PUC but also affects the users as well as consumers of the PUC. Further, imposition of duties may also lead to competition issues within the country.

<sup>300</sup> Para 14 (d) of BFL's Post – Disclosure Comments.

<sup>301</sup> Para 14 (f) of BFL's Post – Disclosure Comments.

<sup>302</sup> [https://prsindia.org/files/budget/budget\\_parliament/2023/Telecom\\_DFG\\_Analysis\\_2023-24.pdf](https://prsindia.org/files/budget/budget_parliament/2023/Telecom_DFG_Analysis_2023-24.pdf) .

<sup>303</sup> Para 20 of Corning India's Post – Disclosure Comments.

<sup>304</sup> “Government of India has historically followed a liberal trade policy in the telecom sector that has been exploited by many countries. For example, foreign vendors, especially those from China, have actively leveraged their government support and larger financial muscle to indiscriminately dump their telecom equipment in the country. There should be stricter enforcement of anti-dumping and anti-circumvention rules with regard to telecom product imports. Both the foreign exporter and domestic importer of such goods should be penalized once such duty evasion is established. E.g., FTA act provides for license/suspension of such players which is never used. We should actively use security carve-outs (allowed under WTO and used by USA) for restricting import of equipment in telecom and other sensitive sectors. Currently, majority of our telecom equipment comes from China, while US has banned Chinese equipment for past many years.” (source: [https://www.trai.gov.in/sites/default/files/TEPC\\_22012018.pdf](https://www.trai.gov.in/sites/default/files/TEPC_22012018.pdf) ).

<sup>305</sup> Para 14 (e) of BFL's Post – Disclosure Comments.

256. Fasten Group has submitted that imposition of anti – dumping duties would inhibit the supply of the subject goods and that the domestic industry is not in a position of catering to the increasing demand of the subject goods. The arguments of the Fasten Group are not found to be tenable in view of the facts of the present investigation. It is noted that there are multiple producers of the PUC in India. The production capacity of such producers is enough to cater to increased demand of the subject goods in India. It is also noted that the users of the subject goods shall also have the option to import subject goods from non – subject countries as well as subject countries. In view of the above, HFCL’s arguments pertaining to monopolisation of domestic market by the applicant is also not found to be sustainable.
257. Fasten Group has also submitted that imposition of anti – dumping duties on the imports of optical fibers would lead to imports of optical fiber cables, thereby leading to closure of cable manufacturing units. The argument put forward by Fasten Group is found to be without any basis. The role of this Authority is not to restrict competition in any manner. Even if it is accepted that imposition of anti – dumping duties on the subject goods may lead to an increase in the imports of a downstream product i.e., optical fiber cables, it is unclear as to how the imports of optical fiber cable would lead to closure of such units, unless such imports are at predatory prices. If the optical fiber cables enter Indian market at competitive prices, there is no reason as to why such imports would lead to closure of domestic cable manufacturing units. Further, if the domestic cable manufactures are faced with such a situation, they may approach this Authority for effective remedy.
258. Fasten Group has also argued that imposition of anti – dumping duties would hamper India’s digital infrastructure. In this regard, the domestic industry has argued that reliance on imported optical fiber for creation of India’s digital infrastructure would be adverse to India’s interests. As stated above, it is noted that the Indian manufacturers have significant production capability to cater to India’s optical fiber demand.
259. At the stage of disclosure, the Authority had disclosed two reports which were to be considered to analyse the Indian industry’s issues. However, none of the other interested parties have made any comment on the same.
260. The Authority takes note of the Telecom Regulatory Authority of India’s (hereinafter referred to as TRAI) Consultation Paper on “Promoting Networking and Telecom Equipment Manufacturing in India”<sup>306</sup> concerning manufacturing of NATE (networking and telecom equipment) products in India, which also includes the PUC. TRAI has acknowledged that due to dumped imports of the NATE products, several domestic manufacturing units are operating at below capacity levels and in some cases such industries have shut down completely. TRAI has also recognised that “local manufacturing in the country at present is suffering severely due to lack of protection from cheaper imports which

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<sup>306</sup> Consultation Paper, Promoting Networking and Telecom Equipment Manufacturing in India available at: [https://www.trai.gov.in/sites/default/files/CP\\_11022022.pdf](https://www.trai.gov.in/sites/default/files/CP_11022022.pdf)

accounts for a vast majority of the market demand”<sup>307</sup> and has argued for imposition of anti – dumping duties to offset the effect of dumping of such goods in India and promotion of manufacturing of such goods<sup>308</sup>. TRAI has also pointed out instances wherein imports from dumped sources of supply are being re-routed through countries having FTAs with India.<sup>309</sup>

261. The Authority also takes note of the Centre for Digital Economy Policy Research’s (hereinafter referred to as “C-DEP”) Report on “Accelerating Digital Atmanirbhar: Report on remedial steps required for making India the World’s capital in optical fibre manufacturing”<sup>310</sup> wherein the independent think tank has observed that manufacturers of optical fiber from China PR have indulged in rampant dumping of the PUC in India. C-DEP has observed that imports of optical fiber from China PR have grown from “merely 2203 Mn FKM in 2019-20 to a whopping 13980 Mn FKM in 2022-23 (till January 2023), an over 5 times increase in a mere span of less than 3 years. Such illegal predatory pricing has deprived Indian manufacturers from being able to fairly access the Indian market itself.”<sup>311</sup> It has also observed that “such imports are pushing Indian manufacturers into distress sale at below production cost”<sup>312</sup>.
262. Regarding the impact of such unfair trade practice on the Indian optical fiber industry, C-DEP has observed that “Even though Indian optical fibre/optical fibre cable manufacturers are extremely competitive, and have immense experience, global benchmark quality, technology know-how and availability of skilled manpower, India is losing ground in international trade to Chinese manufacturers.”<sup>313</sup> C-DEP has also pointed out that the products from China do not necessarily adhere to acceptable global standards. Incidentally, the US and several other West European telecom operators have held back quality approvals for optical fibre from Chinese companies.”
263. Fasten Group has contested the domestic industry’s claims regarding impact of the anti – dumping duties on the end product. It is noted that neither the domestic industry nor any other interested party has put forth any evidence based on which quantitative impact of the anti – dumping duties could be assessed. Nevertheless, it is recognized that the application of lesser duty rule in calculation of appropriate anti – dumping duties, which is in itself a soft public interest clause, alleviates to some extent the pressure that may build on users and consumers of the product under consideration as a consequence of imposition of anti – dumping duties. Further, as stated above, none of the interested parties have provided any evidence for assessing the impact of anti - dumping duties.

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<sup>307</sup> *Id.* at p.70.

<sup>308</sup> *Id.* at p.70.

<sup>309</sup> *Id.* at p.71.

<sup>310</sup> Centre for Digital Economy Policy Research, Accelerating Digital Atmanirbhar: Report on remedial steps required for making India the World’s capital in optical fibre manufacturing, 27<sup>th</sup> March 2023 available at:

<sup>311</sup> *Id.* at p.4.

<sup>312</sup> *Id.* at p.5.

<sup>313</sup> *Id.*

264. The Authority also notes that in 2018 -19 a considerable share of subject imports was coming from non - subject countries which has subsequently declined over the injury period due to decline in demand. However, even with the growth of demand in the POI, it is noted that only the volume of imports from the subject countries has increased. Therefore, it is noted that even though imports of subject goods may decline as a consequence of the imposition of anti – dumping duties, imports from non – subject countries would replace such dumped imports and thereby, mitigate the adverse effects, if any. It is also in the interest of the user industry to have sources of supply of subject goods within the Indian territory for a prompt and short-term delivery of the subject goods. It is also in the long-term interest of the user industry to maintain multiple sources of supply.
265. The applicant and supporter have submitted that optical fiber is a critical component in the digital infrastructure of India and therefore, it is necessary to have a strong competitive industry. The applicant has further claimed that several countries have imposed non – tariff barriers upon the optical fiber produced in China PR due to essential security concerns. It is noted that redressal of such concerns is not within the purview of this Authority. The applicant and the supporter may raise such concerns before the appropriate authority or forum.

## **I. CONCLUSION**

266. Based on the submissions made, substantiated information provided by the interested parties and the facts available before the Authority as recorded and examined in the aforementioned paragraphs and on the basis of determination of dumping and consequent injury to the domestic industry, the Authority concludes the following:
- i. The subject goods exported from the subject countries and the article manufactured by the domestic industry are ‘like article’ to each other in terms of Rule 2 (d) of the AD Rules, 1995.
  - ii. The applicant accounts for 27 % of the eligible domestic production and along with the supporter, accounts for 90 % of the eligible domestic production. The applicant satisfies the requirements stipulated under Rule 2 (b) of the AD Rules, 1995 and application satisfies the standing requirements under Rule 5(3) of the AD Rules, 1995.
  - iii. The application contained all information relevant for the purpose of initiation of the anti – dumping investigation and necessary evidence in terms of Rule 5(2) of the AD Rules, 1995 to justify the initiation of the present investigation for determination of dumping and material injury to the domestic industry in terms of Rule 5 (3) of the AD Rules, 1995.
  - iv. The claims regarding confidentiality were accepted wherever warranted and in case, where such confidentiality claims were found to be excessive, the interested parties were directed to disclose the same or provide appropriate non – confidential summary of the same in terms of Rule 7 of the AD Rules, 1995.
  - v. **Dumping margin:** Three producers from China PR namely Futong, Fasten Group and

Sterlite China had participated in the investigation. Based on the information provided by such exporters and the constructed normal value, the dumping margin for exports of Futong and Fasten Group was determined to be positive whereas dumping margin for Sterlite China was determined to be negative. None of the producers from Korea RP and Indonesia participated in the investigation and after considering the facts available on record in terms of Rule 6(8) of the AD Rules, 1995, imports from these subject countries were also found to be at dumped prices.

- vi. **Volume effect:** The volume of imports and the dumping margin of the subject goods from the subject countries were found to be above *de minimis* thresholds as stipulated under para (iii) of Annexure – II to the AD Rules, 1995.
- vii. With respect to the volume effect of the dumped imports on the state of the domestic industry as required to be assessed under para (ii) of the AD Rules, 1995, it was found that such imports have increased in absolute as well as relative terms to the production and consumption of the PUC in India. It was further found that the growth in demand was almost entirely subsumed by such dumped imports. Although, the domestic industry was able to retain its market share by selling the ‘like article’ at losses, the market share of the supporter significantly declined as a result of the dumped imports.
- viii. **Price effect:** As regards the price effect of such dumped imports, it was found that price undercutting from all three subject countries was positive. It was further found that such dumped imports were depressing the prices of the domestic industry. The landed value of the subject imports was found to be at their lowest level in the POI.
- ix. As regards the effect of such dumped on the economic parameters of the domestic industry, the following conclusions were reached:
  - a. **Production, capacity, capacity utilisation, sales, and market share:** The applicant’s production as well as capacity were found to be increased. However, due to presence of dumped imports it was not able to fully utilise its capacities. The applicant was able to maintain its sales and market share at par with the base year by selling the like article at losses. Nevertheless, there was considerable growth in demand which was largely subsumed by dumped imports. It was also found that supporter’s sales as well as market share has significantly declined.
  - b. **Cost of sales, selling price, profitability, and return on capital employed:** The applicant’s per unit cost of sales and selling price have declined. The selling price of the applicant was found to below the unit cost of sales. Further, the decline in selling price was not found to be commensurate with the decline in the cost of sales. The applicant’s cash profits, profit before interest and tax, as well as return on capital employed have significantly declined as compared to the base year. Even with restoration of demand during the POI, the applicant was not able to achieve profits.
  - c. **Inventories:** The applicant’s inventories of the ‘like article’ were found to be increased during the POI.
  - d. **No. of employees, productivity, and wages:** There has been a decline in the number of employees and wages have also declined. However, the productivity of the applicant has increased which can be attributed to the increase in production. Given the fact that the PUC is a technological product, the production process is

automated and therefore, slight reduction in number of employees would not affect the productivity of the applicant.

- e. **Growth:** The applicant's growth in terms of production, domestic sales, profits, return on capital employed, inventories and market share were found to be adversely impacted.
  - f. **Ability to raise capital investment:** It was found that despite an increase in demand of the subject goods, the applicant's performance had deteriorated which has impacted its ability to raise capital investments.
- x. **Injury Margin:** Upon comparison of the non – injurious price determined as per Annexure – III to the AD Rules, 1995 and the landed value of subject imports from the subject countries as required under Rule 17 (3) (b) to the AD Rules, the injury margin for Futong and Fasten Group were found to be positive, whereas the injury margin for Sterlite China, the injury margin was found to be negative. Apart from the above three producers, no other producer from China PR participated. None of the producers from Korea RP and Indonesia participated in the investigation and after considering the facts available on record in terms of Rule 6(8) of the AD Rules, 1995, the injury margin for imports from these subject countries were also found to be positive.
  - xi. **Causal link:** It was found that domestic industry has suffered material injury due to the dumped imports and no other known factors were found to be the cause of the injury. There has been an increase in the volume of the dumped imports during the POI due to which the inventories of the domestic industry have piled up. The presence of dumped imports in the Indian market forced the applicant to sell its like article at prices below its cost of sales, thereby incurred losses and adversely affected the profitability parameters of the domestic industry. Further, the incremental demand for the subject goods in the POI was largely subsumed by the imports from the subject countries due to which the applicant was not able take advantage of the growth in Indian consumption.
  - xii. **Indian industry issues:** None of the interested parties filed any quantitative data through which the impact of anti – dumping duties could be assessed on the user industry. However, the Authority has relied upon the observations of the Telecom Regulatory Authority of India and Report of the Centre on Digital Economy with respect to preservation and existence of a vibrant and competitive optical fiber industry in India. Further, given the multiple producers of the like article in India, aspersions regarding creation of monopoly were also found to be unlikely.

## **J. RECOMMENDATIONS**

- 267. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was provided to the domestic industry, other domestic producers, Embassies of the subject countries, producers/exporters of the subject goods from the subject countries, importers, users, and other interested parties to provide information with regards to dumping, injury, and causal link. Having initiated under Rule 5(3) of the AD Rules, 1995 and conducted investigation in accordance with Rule 6 of the AD Rules, 1995 regarding dumping, injury and causal link as required under Rule 17 (1) (a)

of the AD Rules, 1994 and established material injury to the domestic industry due to subject imports from the subject countries, the Authority recommends imposition of anti – dumping duties on the subject imports from the subject countries

268. Further, having regard to the lesser duty rule as enunciated in Rule 17 (1)(b) of the AD Rules, 1995, the Authority recommends imposition of definitive anti – dumping duties equal to the lesser of margin of dumping or margin of injury, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, definitive anti – dumping duties equal to **the amount** indicated in Col. (7) of the ‘duty table’ below is recommended to be imposed on all subject imports from the subject countries originating or exported from the subject countries.

### DUTY TABLE

SN	CTH Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty*** (USD/KFKM)
Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)
1.	9001 10 00	Single – Mode Optical Fiber**	China PR	Any country including China PR	Jiangsu Sterlite Fiber Technology Co., Ltd.	122.41
2.	-do-	-do-	China PR	Any country including China PR	Jiangsu Fasten Photonics Co., Ltd.	254.91
3.	-do-	-do-	China PR	Any country including China PR	Hangzhou Futong Communication Technology Co., Ltd.	464.08
4.	-do-	-do-	China PR	Any country including China PR	Any producer other than S.No. 1 to 3 above	537.30
5.	-do-	-do-	Any country	China PR	Any producer	537.30

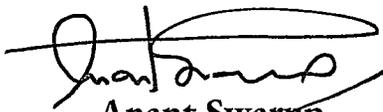
			other than subject countries			
6.	-do-	-do-	Korea RP	Any country including Korea RP	Any producer	807.88
7.	-do-	-do-	Any country other than subject countries	Korea RP	Any producer	807.88
8.	-do-	-do-	Indonesia	Any country including Indonesia	Any producer	857.23
9.	-do-	-do-	Any country other than subject countries	Indonesia	Any producer	857.23

\*\* The product under consideration is "Dispersion Unshifted Single – Mode Optical Fiber" ("SMOF"). The product scope covers Dispersion Unshifted Fiber (G.652) and Bend insensitive single mode Fiber (G.657). Dispersion Shifted Fiber (G.653), Cut-off shifted single mode optical Fiber (G.654), and Non-Zero Dispersion Shifted Fiber (G.655 & G.656) are specifically excluded from the scope of the PUC.

\*\*\* The trading of this commodity occurs in FKM (fibre kilometre)/KFKM (1KFKM = 1000 FKM). The recommended ADD should be collected in this unit. Accordingly, steps may be taken to ensure the same.

#### K. FURTHER PROCEDURE

269. An appeal against the recommendation of the Authority shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

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