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F. No. 6/07/2023-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, Parliament Street, New Delhi -110001

Dated: 29.06.2024

FINAL FINDING
ADD (OI) –07/2023

Subject: Anti-dumping investigation concerning imports of "anodized aluminium frames for solar panels/modules" originating in or exported from China PR.

A. BACKGROUND OF THE CASE

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

1. Whereas, M/s Vishakha Metals Pvt. Ltd. (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 Act and the Rules for initiation of an anti-dumping investigation concerning imports of "aluminium frame for solar panels/modules" originating in or exported from China PR" (hereinafter referred to as the "subject goods") from China PR (hereinafter referred to as the "subject country") and has requested for imposition of anti-dumping duty.

2. And whereas, the Authority, on the basis of *prima-facie* evidence submitted by the applicant, issued a public notice vide notification no. 6/07/2023-DGTR dated 30th June 2023, published in the Gazette of India, Extraordinary, initiating the anti-dumping investigation in accordance with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the said subject country, and to recommend the amount of anti-dumping duty, which, if levied would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

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

i. The Authority notified the embassy of the subject country in India about the receipt of the present application before proceeding to initiate the investigation in accordance with Rule 5(5) of the Anti-Dumping Rules.

ii. The Authority issued a public notice dated 30th June 2023, published in the Gazette of India, Extraordinary, initiating an investigation concerning the imports of the subject goods from the subject country.

iii. In accordance with Rule 6(2), the Authority sent a copy of the initiation notification to the embassy of the subject country in India and known producers and exporters from the subject country.

iv. The Authority also provided a copy of the initiation notification to the known importers / users and the domestic industry as well as other domestic producers as per the information made available to it by the applicant, and requested them to make their views known in writing within the prescribed time limit.

v. The Authority also provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassy of the subject country in India, in accordance with Rule 6(3) of the Rules. A copy of the non-confidential version of the application was circulated to the other interested parties.

vi. The embassy of the subject country in India was also requested to advise the producers / exporters in their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers / exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.

vii. The Authority sent questionnaires to the following known producers/exporters in the subject country calling for necessary information in accordance with Rule 6(4) of the Rules.

i. Akcome Metals Technology
ii. Akcome Metals Technology Nantong Co Ltd
iii. Arkat Alumiyum San Tic A S
iv. Bossard Fastening Solutions
v. Brave C H Supply Co Ltd
vi. Ciel Et Terre Taiwan Co Ltd
vii. Guangzhou Ruxing Technology
viii. Guangzhou Ruxing Technology Development Co. Ltd
ix. Enphase Energy Inc
x. Guangzhou Ruxing Technology
xi. Guangzhou Ruxing Technology Development Co
xii. Jia Yue Group Co Ltd
xiii. Jiangsu Yuejia Metallic Technology
xiv. Jiangyin Enor New Material Technology Co Ltd
xv. Zhejiang Jiaxing Taihe New Energy
xvi. Zhejiang Jiaxing Taihe New Energy Technology Co
xvii. Zhuhai Gmee Solar Equipment Co Ltd

xviii. Zhejiang Jinko Solar Co Ltd
xix. Jiangyin Optimal Metal Technology
xx. Jiangyin Tianmu Green Energy Technology Co Ltd
xxi. Jiangyin Tinze New Energy Technology Co Ltd
xxii. Jiangyin Yuansheng Aluminium Co
xxiii. Jiangyin Haihong New Energy Technology Cc Ltd
xxiv. Jiangyin New Sulv Technology
xxv. Jiangyin Yuanshuo Metal Technology Co Ltd
xxvi. Jiangyin Yurun Solar Module Co Ltd
xxvii. Lead Solar Holdings Co Ltd
xxviii. Lucky Harvest Co Ltd
xxix. Jiangyin Haihong New Energy
xxx. Jiangyin New Sulv Technology Co Ltd
xxxi. Jiangyin Yuansheng Aluminium Co Ltd
xxxii. Nantong T-Sun New Energy Co Ltd
xxxiii. Powerchina Trade Solution Group Limited
xxxiv. Shunde Native Produce Import Export Co., Ltd.

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

i. Jiangyin Yuanshuo Metal Technology Co., Ltd.,
ii. Jiangyin Haihong Solid-FSW Co., Ltd. and Jiangyin Haihong New Energy Technology Co., Ltd.,
iii. Jiangsu Yuejia Metallic Technology Co., Ltd.,
iv. Jiangyin Tinze New Energy Technology Co., Ltd.,
v. Zhejiang Jiaxing Taihe New Energy Technology Co., Ltd. and
vi. Jiaxing Youjia Metal products Co., Ltd.

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

i. A R Enterprises
ii. Ciel Et Terre Solar Private Limited
iii. Enkay Solar Power and Infrastructure
iv. Enphase Solar Energy Private Limited
v. Goldi Solar Private Limited
vi. Greenbrilliance Renewable Energy Llp
vii. Hr Solar Solution Private Limited
viii. Jinkosolar Trading Private Limited
ix. Jyotitech Solar Llp
x. Mundra Solar Technology

xi. Mundra Solar Energy Limited
xii. Mundra Solar Pv Limited
xiii. Mvm Solar Pvt Ltd
xiv. Pahal Solar
xv. Pure Solar Pvt Ltd
xvi. Renewsys India Private Limited
xvii. Rugged Solar Products
xviii. Sakura Premier Solar Private Limited
xix. Solar Solutions India
xx. Sova Solar Limited
xxi. Spark Solar Technologies Llp
xxii. Sri Savitr Solar Private Limited
xxiii. Tata Power Solar Systems Ltd
xxiv. Vikram Solar Limited
xxv. Agrawal Renewable Energy

x. The following importers and users have submitted questionnaire responses to the Authority:

i. M/s WAREE Energies Ltd.

xi. Further, the following interested parties have also made submissions during the investigation:

i. China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME)
ii. Jiangyin New Sulv Technology Co., Ltd.
iii. Avaada Ventures Private Limited
iv. Solar Power Developers Association (SPDA)
v. North India Module Manufacturer Association
vi. Citizen Solar Private
vii. Cosmic PV Power Private Limited represents
viii. EMMVEE Photovoltaic Power Private Limited
ix. M/s GreenBrilliance Renewable Energy LLP
x. Insolation Energy Ltd
xi. Navitas Green Solutions Pvt. Ltd
xii. Neosol Technologies Pvt. Ltd
xiii. Novasys Greenergy Pvt Ltd
xiv. Pixon Green Energy Private Limited
xv. PV Power Technologies Pvt. Ltd
xvi. Solarium Green Energy Private Limited
xvii. Solex Energy Ltd.
xviii. Sova Solar Limited
xix. Hindalco Industries Limited

xii. The Authority issued economic interest questionnaire (EIQ) to all interested parties and the concerned ministry. Response to EIQ was submitted by the domestic industry and Avaada Ventures Private Limited.

xiii. The period of investigation (POI) for the purpose of the present investigation is 1st April 2022 to 31st March 2023 (12 months). The injury analysis period covers April 2019 to March 2020, April 2020 to March 2021, April 2021 to March 2022 and the period of investigation.

xiv. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of the subject goods for the injury period. For the purpose of the final findings, the Authority has relied upon the DGCI&S import data.

xv. The Authority held a discussion with all the interested parties to discuss the product under consideration and the PCN's on 10.11.2023. After receiving inputs from the interested parties, the Authority vide notification dated 23.11.2023 notified the final product under consideration.

xvi. Further information was sought from the applicant to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the present investigation.

xvii. The Authority made available the non-confidential version of the submissions made by the various interested parties. A list of all the interested parties was uploaded on the DGTR website along with the request therein to all of them to email the non-confidential version of their submissions to all the other interested parties since the public file was not accessible physically due to the ongoing global pandemic.

xviii. The non-injurious price (hereinafter referred to as the 'NIP') has been determined based on the cost of production and reasonable return on capital employed for 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.

xix. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 14.02.2024. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, 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.

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

xxi. The information submitted by the domestic industry has been examined and verified during on site-verification to the extent deemed necessary and has been relied upon for the present final findings.

xxii. The examination and verification of the information submitted by the cooperating producers/exporters from the subject country was also carried out to the extent deemed necessary and have been relied upon for the purpose of the present final findings.

xxiii. The Authority made available the non-confidential version of the evidence presented by various interested parties in the manner prescribed through Trade Notice no. 01/2020 dated 10th 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, the Authority has considered such information/submissions as confidential. In case of non-acceptance of confidentiality claims, the interested parties were directed to submit the non-confidential version of the same and circulate it to the other interested parties.

xxiv. 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.

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

xxvi. '***' in these final findings represent information furnished by an interested party on confidential basis and so considered by the Authority under Rule 7 of AD Rules, 1995

xxvii. The exchange rate adopted by the Authority for the subject investigation is 1 US$ = Rs. 81.20.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

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

> *"3. The product under consideration is "aluminium frame for solar panels/modules" originating in or exported from China PR. The Aluminium frames for solar panels/modules is popularly known in the market as "aluminium frames". The product plays a fundamental role in the overall assembly of the solar panel/module. Further the applicant claims that the product under consideration covers all types of aluminium frames.*
>
> *The Aluminium frames for solar panels/modules protect the internal components from thermal and mechanical tensions, on the other hand it provides mounting attachment points. Most solar PV panels are fitted with aluminium frames, which*

hug the glass covering the top and the solar back sheet at the bottom. The malleability of aluminium allows the manufacturers to give shapes as per customer's requirement. Thus, it enhances the component's support and increases the battery service life."

5. The alleged dumped goods are classified under Chapter 76 Heading ―aluminium and articles thereof to the Customs Tariff Act, 1975. The petitioner submits that, it is imported under different codes from company to company and country to country, and is majorly under the headings 7610 and 7616. The petitioner claims that the product under consideration is also being imported under following customs classifications: 76109010, 76109020, 76109030, 76109090, 7616, 76161000, 76169910, 76169990. The customs classification is indicative only and in no way, it is binding upon the product scope.

C.1. <u>Submissions of the other interested parties</u>

6. The other interested parties have submitted as follows with regard to the scope of the product under consideration and like article:

i. The determination of the PUC is highly vague, unclear and unjustified. There is no evidence provided by the applicant to justify the determination of the PUC to be limited to end use in solar modules. In fact, the petition does not provide any clear identification of the product under consideration and fails to provide any technical or commercial parameters for identification of the subject goods.
ii. The PUC is intentionally kept as vague and ambiguous whereby no reasonable or clear comparison between the imported products and the product alleged to be supplied by the applicant can be made.
iii. The aluminium frames for solar modules are not different from other aluminium frames as defined by the applicant. It is further submitted that all extrusions will be inadvertently covered under the scope of the duties. There is no technical or commercial difference between aluminium extrusions manufactured in India and the PUC claimed by the applicant.
iv. The applicant is not able to strictly meet the quantitative and quality parameters of the user industry and therefore, end users are compelled to import specialized grades which are not adequately supplied by the domestic industry.

C.2. <u>Submissions of the domestic industry</u>

7. The domestic industry has submitted as follows with regard to the scope of the product under consideration and like article.

i. During the hearing dated 14.02.2024, certain interested parties raised concerns apprehending lack of clarity regarding the scope of the product under consideration. They requested for inclusion of the word "anodized" while defining the product under consideration. The domestic industry submits that the Product

under Consideration i.e., aluminium frames for solar panels by definition, have to be anodized and, therefore, the description is correct. However, after considering the submissions made by the interested parties and for the sake of complete clarity, the domestic industry has no objection if scope of the product under consideration is modified as "*The product under consideration is "anodized aluminium frames for solar panels/modules originating in or exported from China PR….."*.

ii. The interested parties have stated that the application attempts to include non-solar grade aluminium profiles in the investigation. However, the said parties have conveniently ignored the fact that the very title/subject of the initiation notification states that the present investigation is against imports of "aluminium frames for solar panels / modules". Clearly, the said parties are either under misapprehension or are merely trying to derail the investigation by making incorrect assumptions/assertions.

iii. Aluminium frames for solar modules are a distinct product with specific profiles which are suitable only for the specified application i.e., solar modules. Further, the alloy grade used for aluminium frames for solar modules is different than the alloy grade used for aluminium frames for any other application due the hardness requirements of the solar module.

iv. As per International Electrotechnical Commission 61215 (IEC 61215), the aluminium frames for solar modules are required to undergo mechanical load test wherein a force/weight of 5,400 pascals is applied on top to put stress on solar modules. In such condition, the PUC should withstand the force/weight to be suitable for solar applications. No such standard is applicable for aluminium frames for any other application.

v. The aluminium frames for non-solar applications do not normally require any anodizing. Aluminium frames for architectural applications also do not require anodizing as they are generally colour coated. In rare cases, where anodizing is done for non-solar applications, the coating is significantly less than the coating required for solar applications. Considering the above factors like the profile, mechanical strength, alloy used and the extent of anodizing coating would make the aluminium frames for solar modules a clearly differentiable product.

vi. Until March 2022, aluminium frames for solar modules were exempted from the payment of customs duties and there was no legal or operational difficulty in distinguishing such aluminium frames from profiles for other purposes.

vii. The fact that the major aluminium extrusion manufacturer, Hindalco, itself has categorically confirmed that they do not manufacture the PUC, indicates that there is significant and distinguishable difference in aluminium profiles for solar applications and other applications.

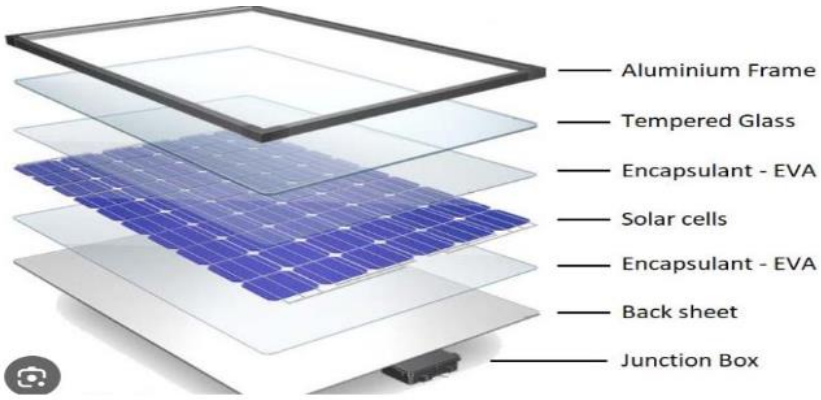
viii. The interested parties have used criteria's such as "no visual difference", to state that the aluminium frames for solar modules are similar to aluminium frames for any other applications. Merely lack of "visual difference" does not make other types of aluminium frames substitutable with the PUC.

ix. At the time of initiation, the interested parties raised similar issues relating to the PUC and requested the directorate for a finding on such issues before filing their questionnaire responses. The interested parties kept on delaying the filing of questionnaire responses stating that the PUC needs to be finalised before they are made to file their questionnaire responses. It is for this reason that while the present investigation was initiated on 30.06.2023, the parties were allowed to file their questionnaire responses till 07.12.2023 i.e., after more than 5 months into the investigation. Based on such representations, the Authority held a meeting with all stakeholders on 10.11.2023.

x. However, despite the meeting being scheduled on their own requests, the interested parties chose not to come before the directorate during the meeting. Thus, the Authority, vide order dated 23.11.2023, finalised the PUC. Having taken multiple extensions extending more than 5 months, on account of this very issue, the interested parties cannot be allowed to raise the same issue again.

C.3. Examination by the Authority

8. The product under consideration in the notice of initiation was defined as *"aluminium frame for solar panels/modules"*.



9. Post initiation of the investigation, the Authority received multiple representations stating that the product under consideration defined by the domestic industry and as contained in the notice of initiation was vague. They also requested the Authority to decide such issues in the very beginning and settle the product under consideration before they file their questionnaire responses. Upon receiving various such requests, the Authority held a meeting with all the stakeholders to decide the scope of the product under consideration

on 10.11.2023. However, no comment was received, except by the domestic industry, on such issues during the meeting. All the parties who had attended the oral hearing were provided an opportunity to file their written submissions on the PUC and the PCNs. After considering the submissions made by the domestic industry and the fact that no other party raised any issue during the meeting regarding PUC/PCN in the present case, the Authority finalized the product under consideration vide notification dated 23.11.2023.

10. The product under consideration does not have any dedicated HSN code. However, the Authority notes that the subject goods are being imported under the sub-headings 76109010, 76109030, and 76169990 of the Customs Tariff Act 1975. The custom classification is indicative only, and in no way, it is binding upon the product scope

11. As regards the submissions of the interested parties relating to the domestic industry not being able to meet quality standards required by the importers, it is noted that apart from allegations, no evidence in this regard has been provided by the interested parties. In any case, it is settled jurisprudence that quality is not a relevant parameter in anti-dumping investigations.

12. As regards the submission of the interested parties regarding vagueness of the product under consideration, the Authority notes that the product under consideration has been very clearly defined with specific use base coverage. The Authority also notes that till March 2022, aluminium frames for use in solar applications were exempted from the payment of customs duties and there was no legal or operational difficulty in distinguishing the PUC from frames/profiles for other purposes.

13. As per Rule 2 (d) of the Rules relating to the definition of “like article”, it is specified that "like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

14. The Authority notes from the above and the information available on record that the product under consideration produced by the domestic industry and imported from the subject country are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications and tariff classification of the subject goods. The subject goods produced by the domestic industry and imported from the subject country are like articles in terms of the anti-dumping rules. The two are technically and commercially substitutable.

15. Thus, the Authority holds that the subject goods produced by the domestic industry are like article to the product under consideration imported from the subject country in accordance with the anti-dumping rules

16. As regards the contention for use of the term "anodized" while defining the product under consideration, the Authority notes that anodizing is a pre-condition for production of the product under consideration. However, to bring more certainty to the PUC, the Authority has decided to add "anodised" in the definition of the PUC.

17. In view of the above, the Authority defines the product under consideration as*:* "*Anodised aluminium frames for solar panels/modules".*

18. The product under consideration does not have any dedicated HSN code. However, the Authority notes that the subject goods are being imported under the sub-headings 76109010, 76109030, and 76169990 of the Customs Tariff Act 1975.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1. Views of the other interested parties

19. The other interested parties have submitted as follows with regard to the scope of the domestic industry and standing:

i. The applicant has claimed to be the sole producer of 'anodized aluminium frames for solar panels/modules', what is known in the market as simply 'aluminium frames'. As stated earlier, making of aluminium frames for solar module is similar to making frames for photographs/pictures and it is done in workshops/small shops and the applicant share in the said activity is not even 0.1% in the country. The product on which duty is sought is basically aluminium profiles and sections which is produced in India by big players like Hindalco and other smelters.

ii. There are other major producers of the subject goods whose information has not been disclosed by the domestic industry. The applicant has no standing at all to move the application for imposition of duty on aluminium frames for solar panels and modules.

iii. Vishakha has stated in their written submissions that there are other processors who carry out processing (surface treatment, fabrication etc.) of the semi-finished materials. This information was not provided by Vishakha in its application. It is only being provided now because Vishakha's status as the sole producer of the PUC in India was questioned during the oral hearing. This is nothing but an attempt to mislead the Authority.

iv. The applicant has claimed that they are not related to any exporter or importer of the subject goods. The said statements of the petitioner are false and misleading for the reason that the petitioner has a related company namely, Mundra Solar PV Limited who is a major importer of the subject goods from China PR. However, the petitioner denied its relationship with Mundra Solar PV Limited in the oral

hearing and stated that it has no related company who is an importer of the subject goods.

v. Rule 2(b) clearly provides that producers who are importers or related to importers shall be excluded from the term domestic industry. The petitioner is related to Mundra Solar Energy Limited, Mundra Solar PV Limited and Mundra Technology Limited. All these companies are importers of the subject goods and major buyer of subject goods from the applicant. The petitioner has deliberately concealed this fact in the petition and denied relationship with any importer during the oral hearing held on 14th February 2024.

vi. Vishakha Metals Private Limited, the petitioner company is a joint venture between Ahmedabad based Vishakha group and Adani Properties Private Limited (APPL), holding stake in 60:40 ratio respectively. Adani Properties Private Limited is a main shareholder of Vishakha Metals Private Limited and thus, exercise significant control over the petitioner. Further, Adani Properties Private Limited is a holding company of Adani Green Energy Limited which is a holding company of Mundra Solar PV Limited and Mundra Solar Energy Limited as well.

vii. Annual Report of Mundra Solar PV Limited for the FY 2022-23 filed with Ministry of Corporate Affairs clearly provides the relationship between a) Mundra Solar PV Limited and Adani Properties Private Limited and b) Mundra Solar PV Limited and Vishakha Metals Private Limited.

viii. There is a common director between all the four companies namely, Vishakha Metals Private Limited, Mundra Solar PV Limited, Mundra Solar Energy Limited and Mundra Solar Technology Limited. The same is evident from the Website of Ministry of Corporate Affairs.

ix. The petitioner has deliberately misled the Authority by making false declaration and certification resulting into initiation of this investigation. Had the petitioner disclosed this information, the Authority would have not initiated this investigation. Therefore, the present investigation should be terminated based on this ground only.

D.2. <u>Submissions by other domestic producer, M/s Hindalco Industries Limited</u>

i. M/s Vishakha Metals Private Limited ("Vishakha") is currently the only manufacturer of fully fabricated aluminium frames for solar panels/modules in the country. They have stated that they did not produce or sell such goods during the period of investigation ("POI"). Post the POI, Hindalco produced a minuscule quantity of such products for testing purposes in one of its existing facilities.

ii. Hindalco have plans to manufacture such products in a dedicated facility, the incessant dumping and subsidisation of such products by China PR prevents it from doing so. If such unfair trade is addressed appropriately, including through the current investigation, Hindalco is ready to enter the market.

iii. The imposition of an anti-dumping duty against China PR would not only protect Vishakha but also facilitate new investments from other manufacturers, including Hindalco. Therefore, Hindalco unequivocally supports the proposed levy of anti-dumping against aluminium frames for solar modules from China PR.

D.3. <u>Submissions of the domestic industry</u>

20. The domestic industry has submitted as follows with regards to the scope of the domestic industry and standing.

i. The evidences submitted by the interested parties regarding existence of other producers, merely point out that there are certain domestic player "offering" or "marketing" the subject goods in the Indian market. Not even a small evidence has been placed on record which may indicate that such domestic players are "producing" the subject goods. Needless to state that merely "offering" or "marketing" the subject goods does not imply that such entities are "producing" the subject goods.

ii. The interested parties have conveniently ignored that the application filed by the applicant as well as the initiation notification clearly mentions that there are some processors who carry out processing (surface treatment, fabrication etc.) on semi-finished material, which does not affect the standing of the applicant in any manner whatsoever.

iii. The arguments raised by the interested parties is not only incorrect but also contradictory to their own submissions. On the one hand, the interested parties have stated that the production of the applicant merely constitutes a minimal percentage of total domestic production while on the other, they have stated that there is significant demand-supply gap in the country. Both are mutually exclusive and contradictory to each other. This itself demonstrates that the interested parties are raising unsubstantiated claims without any factual basis in their attempt to delay the investigation and deny the much-needed protection to the domestic industry.

iv. It is a matter of disbelief that the interested parties continue to assert that Hindalco is one of the major producers of the PUC in the country despite the fact that Hindalco itself, through their letter dated 10.11.2023, as well as during the hearing on 14.02.2024, unambiguously clarified that they have not manufactured the subject goods during the POI. Despite such unambiguous and categorical assertion

made by Hindalco itself, the insistence of the interested parties that Hindalco is a major producer of the subject goods, is incomprehensible.

v. Certain issues were raised during the hearing regarding the relationship of the applicant with importers of the subject goods. As mentioned during the hearing, the respondents merely made certain statements without clearly bringing out either the factual matrix or the legal basis for their ill-conceived claims.

vi. Besides making unsubstantiated and baseless allegations, none of the interested parties has provided any evidence demonstrating relationship between the applicant and MSPVL or any other party importing the subject goods. The respondent interested parties cannot be allowed to raise unsubstantiated contentions based upon wild allegations, conjectures and surmises. It may be recalled that the domestic industry requested that the respondents should at least explain the premise of their unsubstantiated claims in the absence of which the domestic industry would not be in a position to respond. It is unfortunate that neither during the hearing nor in their written submissions, the respondents have bothered to elaborate their claim or to provide even an iota of evidence in support of their allegations.

vii. When during the hearing, similar allegations were raised by the said parties, the Hon'ble Designated Authority specifically asked such parties to discharge their burden of proof by providing evidence substantiating such allegations, at least on a *prima facie* basis. However, unfortunately no such legal premise or evidence has been provided even at this stage. Instead of discharging their burden of proof, the interested parties have instead put it upon the applicant to establish that it is not related to MSPVL.

viii. The only document provided by the interested parties while making such allegations are certain paragraphs of some report by CARE Ratings Ltd. In this context, it is submitted that the said report cannot form the basis of any information or observation which could even remotely suggest any relationship between the applicant and MSPVL in terms of the legal provisions.

ix. It is critical to understand the meaning of "relationship" in context of Rule 2(b) of the Rules. The same was discussed at length by the Authority in the matter of anti-dumping investigation concerning imports of hydrogen peroxide originating in or exported from Bangladesh, Taiwan, Korea RP, Indonesia, Pakistan and Thailand, [F. No. 14/3/2015-DGAD, Dated 11th April, 2017].

x. In Hydrogen Peroxide case, the Directorate, despite significant shareholding between the related companies, held that the same is not sufficient to indicate legal or operational control. Further, the Directorate even found it irrelevant and insufficient that the related company was a promoter of the applicant industry. The

Authority held that to establish relationship, in context of Rule 2(b), "[T]here must be evidence that the related domestic producer has acted differently due to relationship, or has participated in dumping practices and has taken such steps which would have resulted in self-inflicted injury", apart from evidence of direct "legal or operational control". In the facts of the present case, apart from the conspicuous absence of all the requirement stated by the Authority in the said case, there is no common shareholding between the applicant and MSPVL.

xi. As regards the submission that the applicant is a backward integrated plant for Adani group, or that the applicant is in strategic partnership with MSPVL, it is submitted that the said submissions are inconsequential apart from being without merit.

xii. While there is no evidence on record to support the unsubstantiated claims of the respondents, merely existence of strategic partnership with a producer of downstream product does not render the applicant ineligible. For rendering a domestic producer ineligible in terms of Rule 2(b), there must be evidence that the domestic producer has acted differently due to relationship, or has participated in dumping practices and has taken such steps which would have resulted in self-inflicted injury, apart from evidence of direct legal or operational control. None of the said condition can exist merely because of a strategic partnership.

D.4. <u>Examination by the Authority</u>

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

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

22. The application was filed by M/s Vishakha Metals Private Limited claiming to be the sole domestic producer of the subject goods.

23. As regards the submissions of the interested parties that companies such as Hindalco Industries Limited etc. are major producers of the subject goods, the Authority notes that none of the interested parties have submitted any evidence substantiating such claims. In fact, M/s Hindalco Industries Limited itself has submitted before the Authority that during the POI, the applicant was the sole producer of the subject goods. They have also stated that they have produced miniscule quantities of the subject goods in post-POI period.

24. As regards the submissions that the applicant has not disclosed in its petition that there are certain processors who carry out processing (surface treatment, fabrication etc.) of the semi-finished materials, the Authority notes that such submission is factually incorrect. The applicant has, in Part-I, in response to question VI (d) has clearly stated the said fact. Thus, such submissions are without merit and are rejected.

25. As regards the submission of the exporters that the applicant is related to Mundra Solar Energy Limited, Mundra Solar PV Limited and Mundra Solar Technology Limited, the Authority notes that till the stage of filing of written submissions no evidence regarding the same was provided by the exporters. In fact, the Authority specifically asked the exporters during the oral hearing dated 14.02.2023 to discharge their burden of proof by providing evidence in support of such allegations. Despite that, no such evidence/information was provided by the exporters either during the hearing or in their written submissions.

26. Further, the allegations regarding the applicant company being related to the importers named hereinabove through the shareholding of M/s Adani Properties Private Limited (which holds ***% stake in applicant company) in Adani Green Energy Limited were made for the very first time in the rejoinder submissions filed by the exporters. The evidences with regard to the alleged relationship of the applicant with importers was also submitted for the very first time in the rejoinder submissions filed by the exporters. Further, said rejoinder submissions were not shared by the exporters with the domestic industry, thus, such allegations were never raised during the whole investigation process before the domestic industry nor the evidences relating thereto were provided to them.

27. The Authority notes that it is a settled position regarding a quasi-judicial process that all allegations and evidences should be shared with the other interested parties. The submissions made and the evidences provided by the exporters in this regard are clearly belated. Further, the same have not been provided to the domestic industry to give them the opportunity to defend their interest. This serious violation in the submission of the exporters makes such submissions and the evidences liable to be rejected. However, considering the nature of the allegations and the impact of such allegations, the Authority has decided to examine the issue.

28. The Authority has examined the information relating to the shareholding pattern of all entities in question i.e., Mundra Solar Energy Limited, Mundra Solar PV Limited and Mundra Solar Technology Limited, Adani Properties Private Limited, Adani Green Energy Limited and the applicant as well as the shareholding patterns of majority shareholders in each of these companies. It is noted that there is no cross shareholding between the applicant and the importing entities. Further, even the minor shareholder in the applicant company, i.e., Adani Properties Private Limited does not have any shareholding in either of the importing companies nor such importing entities have any shareholding in either the applicant company or in Adani Properties Private Limited. In

addition, even the shareholders of Adani Properties Private Limited does not have any direct shareholding in either of the importing entities.

29. The excerpts of the Annual reports submitted by the exporters discloses relationship of the minor shareholder, i.e., Adani Properties Private Limited and the applicant with Adani Green Energy Limited, Mundra Solar PV Limited and Mundra Solar Energy Limited, the Authority notes that the said excerpts clearly states that such disclosure was being reported as per Indian Accounting Standards 24 (Ind AS 24) Related Party Disclosure. Ind AS 24 defines related party as under:

> *"A related party is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the 'reporting entity').*
>
> *(a) A person or a close member of that person's family is related to a reporting entity if that person:*
>
> *(i) has control or joint control of the reporting entity;*
>
> *(ii) has significant influence over the reporting entity; or*
>
> *(iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.*
>
> *(b) An entity is related to a reporting entity if any of the following conditions applies:*
>
> *(i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).*
>
> *(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).*
>
> *(iii) Both entities are joint ventures of the same third party.*
>
> *(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity*
>
> *(v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.*

(vi) The entity is controlled or jointly controlled by a person identified in (a).

(vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

(viii) The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity."

30. It may be seen from the above that the definition and scope of the term related party in Ind AS 24 is much broader than related party in context of Rule 2(b) of the Anti-dumping Rules for which a much narrow definition is provided. The explanation to Rule 2(b) defines related party as follows:

Explanation. - *For the purposes of this clause, -*

(i) producers shall be deemed to be related to exporters or importers ***only if****, -*

(a) one of them directly or indirectly controls the other; or

(b) both of them are directly or indirectly controlled by a third person; or

(c) together they directly or indirectly control a third person, subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers."

(ii) A producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.]

31. It may be noted from the above that as against Ind AS 24, the scope of the term related party has been restricted in Anti-dumping Rules by the use of the terms "only if". Thus, under Anti-Dumping Rules, a domestic producer can only be considered to be related to an importer or exporter when there is a form of "control" as described in clauses (a) to (c) of the explanation (i) to Rule 2(b) of the Rules. Further, clause (ii) of the explanation to Rule 2(b) further narrows down the scope of the definition by restricting the definition of control to a situation where "former is legally or operationally in a position to exercise restraint or direction over the latter". The use of the word 'may' further give the Authority power to examine the eligibility and there is no 'automaticity' in declaring the domestic industry as ineligible.

32. Thus, for conducting an examination under Rule 2(b) of the Rules, the Authority needs to see whether there is control *inter-se* between the parties or through a third person and whether such a control, if exist, is of such nature that the former is legally or operationally in a position to exercise restraint or direction over the latter.

33. The Authority has already examined hereinabove that there is no common shareholding between the entities mentioned by the exporter and the applicant. Only because there is one common director (non-executive), the same do not entail either that there is any "control" or that one is legally or operationally in a position to exercise restraint or direction over the other.

34. The Authority further notes that, in any case, the mere presence of relationship is not sufficient to hold a domestic producer ineligible in terms of Rule 2(b) of the Rules. The Authority in anti-dumping investigation concerning imports of Hydrogen Peroxide originating in or exported from Bangladesh, Taiwan, Korea RP, Indonesia, Pakistan and Thailand, [F. No. 14/3/2015-DGAD, Dated 11th April, 2017] has held that in addition to the relationship, it is important to see whether the existence of relationship has caused the allegedly related producers to behave differently from non-related producers. There is nothing on record to indicate that the applicant has behaved differently on account of such alleged relationship.

35. In view of the above, the Authority holds that the applicant is an eligible domestic producer in terms of Rule 2(b) of the Rules and satisfies the criteria of standing in terms of Rule 5(3) of the AD Rules, 1995.

E. CONFIDENTIALITY

E.1. Submissions of the other interested parties

36. The other interested parties have submitted as follows with regards to confidentiality.

i. The petition filed by the domestic industry is deficient, and does not disclose the essential information which is necessary for the interested parties to put forth their defence.
ii. The non-confidential version of the petition is not a replica of the confidential version. The exporters are therefore not able to defend their interests effectively.
iii. The petitioner has disregarded the requirements of Trade Notice 10/2018 dated 07.09.2018, and has claimed excess confidentiality.
iv. The petition does not provide adequate information regarding: (i) manufacturing process; (ii) names of raw materials used in production of the product under consideration; (iii) volume and value of production by all producers except the domestic industry; (iv) average industry norms for capacity utilization; (v) average industry norms for inventory; (vi) funds raised: loans and advances; (vii) export

price/unit; (viii) average industry norms for PBIT; (ix) purchase of the PUC; (x) non injurious price.

v. The domestic industry has not provided any reason for not disclosing information as per Trade Notice 10/2018.

vi. The petitioner has unjustifiably claimed confidentiality over the annual reports of the company.

vii. With regards to claims by the domestic industry that the exporters have claimed excess confidentiality, it was submitted that all information relating to costing and pricing have been kept confidential, and the non-confidential version of the same has been provided indicating trends of the data.

viii. The information regarding the shareholdings of the exporters have been kept confidential since this is business sensitive information.

E.2. <u>Submissions of the domestic industry</u>

37. The domestic industry has submitted as follows with regards to confidentiality:

i. The domestic industry has not claimed excess confidentiality.

ii. Confidentiality claimed by the domestic industry is only for costing information which includes costs and prices.

iii. The domestic industry has provided indexed figures for all information over which it has claimed confidentiality.

iv. The non-confidential versions of the questionnaire response filed by the exporters is not a replica of the confidential version.

v. The exporters have claimed excess confidentiality and have not provided proper indexing of data.

vi. The exporters have kept basic information like structure of enterprise, shareholding pattern, nature of the relationship between the exporter and those affiliated enterprises etc. confidential. There is no justification for the same.

E.3. <u>Examination by the Authority</u>

38. The Authority made available non-confidential version of the information provided by various parties to all interested parties as per Rule 6(7) of the AD Rules.

39. With regard to confidentiality of information, Rule 7 of Anti-Dumping Rules provides as follows:

> "***7. Confidential Information:***
>
> *(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub -rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the*

course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

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

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

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

41. A list of all the interested parties was uploaded on DGTR's website along with the request to all parties therein to email the non-confidential version of their submissions to all other interested parties.

F. MISCELLANEOUS ISSUES

F.1. Submissions of the other interested parties

42. The other interested parties have made the following miscellaneous submissions.

i. The domestic industry in the current investigation has arbitrarily used the import data based on their market intelligence. We understand that the data used by the domestic industry was not representative nor reliable.
ii. The petitioner has provided misleading information to the Authority with regard to its status. In fact, the petitioner has cautiously concealed the fact that it is an SEZ unit only to be considered as an eligible domestic industry.

iii. There is significant demand-supply gap in the country. In such a situation, the imposition of duties shall be unreasonable burdensome for the users.

F.2. Submissions of the domestic industry

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

i. China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) cannot be considered as an interested party in terms of Rule 2(c) of the anti-dumping Rules. The said association has not presented any evidence demonstrating that they fulfil the precondition prescribed in Rule 2(c)(i) to be considered as an interested party.

ii. Avaada Ventures Pvt. Ltd. also do not fall under any of the categories provided under Rule 2(c)(i). As per the written submissions filed by Avaada, they are setting up a module manufacturing facility which is not yet operational. Thus, currently they are neither users nor the importers of the subject goods. In view thereof, the domestic industry humbly requests the Authority to not take into account any submission filed by the said party.

iii. As regards the apprehension expressed by the interested parties regarding correctness of the import data, it is clarified that the domestic industry, at the time of the filing of the petition, relied upon the private import data available with it. Since, the DGCI&S was not provided to the applicant despite several requests, no fault can be attributed to the them. In any case, the initiation notification itself notes that the present investigation has been initiated by the Authority after analysing the DGCI&S data. Thus, the apprehensions expressed in this regard are unfounded.

iv. As regards the submission of the interested parties that there is demand-supply gap in the country, it is submitted that the protection of anti-dumping duties on the subject goods shall really help the industry to not only establish itself but also grow commensurate to the increasing demand in the country.

v. The applicant itself has already ordered machineries for additional capacities of upto 50% of the existing facilities in the last quarter of 2023. Further, the applicant shall further increase the capacities by additional 50% by the end of FY 2024-25. Another major producer of aluminium profiles, Hindalco, has also started producing the subject goods on sample basis after the POI and is committed for full-fledged operations if duties are imposed. The only hinderance in the expansion of capacities in the sector are cheap and dumped imports from China which make the subject goods non-remunerative for the Indian manufacturers. The imposition of duty will, in true sense, lead to the industry being self-reliant or "Atma-nirbhar".

F.3. Examination by the Authority

44. As regards the concerns expressed by the interested parties regarding the import data used by the applicant in its petition, the Authority notes that the import data is not publicly available. In such a situation, the import data relied upon by the applicants was found to

be sufficient by the Authority at the time of filing of the petition. However, for the purpose of the initiation and the present investigation, the Authority has relied upon DGCI&S data. Thus, no prejudice has been caused to the interested parties on this count.

45. As regards the eligibility of CCCME as well as Avada Ventures as interested party, the Authority notes that they do not fulfil the criteria to be considered an interested party in terms of Rule 2(c). However, the Authority has nevertheless dealt with the submissions made by them at appropriate places.

46. As regards the submission that the applicant is an SEZ unit, the Authority notes that such submission is factually incorrect. The applicant has furnished evidence establishing that it has exited from the SEZ prior to the POI.

47. As regards the issue that there is demand-supply gap in the country, the Authority notes that the applicant has already made orders for additional capacities. The Authority further notes the argument of the domestic industry that they plan to further enhance their capacities by the end of 2024-25. In addition, Hindalco has also submitted before the Authority that they have manufactured certain quantities of the subject goods in post POI period and that they do intend to manufacture the subject goods in a dedicated facility, however, the incessant dumping and subsidisation of such products by China prevents it from doing so. They have stated that if such unfair trade is addressed appropriately, including through the current investigation, Hindalco is ready to enter the market.

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

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

> *"(c) "normal value", in relation to an article, means –*
>
> *(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
>
> *(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*
>
> *(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

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

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

G.1. <u>Submissions of the other interested parties</u>

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

i. Designation of China PR as a Non-Market Economy (NME) is not in accordance with applicable laws and procedures.

ii. The relevant provision in Section 15 of China's accession protocol which allowed for treatment of China PR as an NME has expired on 11th December, 2016. Therefore, there is currently no provision prevailing which allows the Authority to treat China PR as an NME in any investigation.

iii. Even if the Authority determines that China PR is a non-market economy for the purpose of this investigation, the Authority cannot directly resort to calculating the normal value based on the third methodology in Paragraph 7 of Annexure I to the Rules (i.e., *on any other reasonable basis*).

iv. The Authority must first attempt to determine the normal value based on; (i) price or constructed value in a market economy third country, or (ii) the price from such a third country to other countries, including India. Only if it is not possible to determine normal value based on these two methods, it can be determined on any other reasonable basis.

v. Decision of the Hon'ble Supreme Court of India in the case of Shenyang Matsushita, 2005 (181) ELT 320 (SC) also supports the view that the Authority must proceed to determine normal value on any other reasonable basis only if it has exhausted the first two methods.

vi. There is no reason provided in the petition as to why the Authority cannot calculate the normal value based on the first two methods.

vii. The information provided by the domestic industry regarding the calculation of normal value has been kept entirely confidential, and it is therefore not possible for the respondents to answer any of the claims in that regard.

viii. The dumping margin provided by the domestic industry should not be relied upon without any verification from the Authority.

G.2. <u>Submissions of the domestic industry</u>

50. The domestic industry has submitted as follows with regard to the normal value, export price and dumping margin.

i. China PR should be treated as an NME in accordance with Article 15(a)(i) of China's Accession Protocol and the normal value should be determined in terms of Annexure I, Rule 7 of the Rules.

ii. Paragraph 8 of Annexure I to the Rules leaves no choice to the Authority but to presume that China is an NME, unless the exporters prove otherwise. Therefore, regardless of the expiry of Section 15(a)(ii) of China's accession protocol, the Authority is bound by Paragraph 8 to presume that China is an NME.

iii. Market economy status is not automatic upon the expiry of Section 15(a)(i), but rather, it would require China's compliance with the other provisions of Section 15 of the Accession Protocol.

iv. The market economy claim of the exporters should not be accepted, as there is significant government intervention in several important sectors of the Chinese economy, warranting the maintenance of non-market economy status of China PR.

v. Market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules.

vi. The market economy claim of the producers from China PR was rejected on the same basis in several recent investigations.

vii. Market economy status cannot be given unless the responding Chinese exporters establish that the actual purchase prices of major inputs substantially reflect market values.

viii. Market economy treatment must be rejected if Chinese exporters are unable to establish that their books are consistent with International Accounting Standards.

ix. It is not for the Authority to establish that the responding companies are operating under market economy environment. But it is for the responding Chinese exporters to establish that they are operating under market economy conditions.

x. Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group has not filed the response, the claim for market economy status must be rejected.

xi. The normal value in China PR can thus be determined on the basis of cost of production in India, duly adjusted, including selling, general and administrative expenses and profit as per the consistent practice of the DGTR.

G.3. <u>Examination by the Authority</u>

51. The Authority sent questionnaires to the known producers / exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The following producers have filed response to the exporter's questionnaire:

i. Jiangyin Yuanshuo Metal Technology Co., Ltd.,
ii. Jiangyin Haihong Solid-FSW Co., Ltd. and Jiangyin Haihong New Energy Technology Co., Ltd.,
iii. Jiangsu Yuejia Metallic Technology Co., Ltd.,
iv. Jiangyin Tinze New Energy Technology Co., Ltd.,
v. Zhejiang Jiaxing Taihe New Energy Technology Co., Ltd. and
vi. Jiaxing Youjia Metal products Co., Ltd.

G.3.1. Determination of normal value

<u>Examination of Market Economy Treatment</u>

52. The Authority sent questionnaires to the known producers / exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The Authority notes that none of the producers/exporters have filed a response to the relevant questionnaire to claim market economy treatment.

<u>Normal value for China PR</u>

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

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

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

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

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

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

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

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

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

54. The applicant has relied upon Article 15(a)(i) of China's the Accession Protocol as well as para 7 of the Annexure I. The applicant has claimed that producers in China PR must be asked to demonstrate that market economy conditions prevail in their industry producing the like product with regard to the manufacture, production and sale of the product under consideration. It has been stated by the applicant that in case the responding Chinese producers are not able to demonstrate that their costs and price information are market-driven, the normal value should be calculated in terms of provisions of Para 7 and 8 of Annexure- I to the Rules.

55. It is noted that while the provision contained in Section 15 (a)(ii) has expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO Anti-dumping Agreement read with the obligation under Section 15(a)(i) of the Accession Protocol require criterion stipulated in paragraph 8 of Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming market economy treatment. It is noted that since the responding producers/exporters from China PR have not submitted response to the supplementary questionnaire the normal value computation is required to be done as per the provisions of paragraph 7 of Annexure I of the Rules.

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

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

57. The Authority notes that under the provisions of para (7) of Annexure I, the normal value may be determined on the basis of price or constructed value in a third country, or the price from such country to other countries, including India. However, when such basis is not possible, only then the Authority can determine normal value on any other reasonable basis, including the price paid or payable in India.

58. As per paragraph 7 of Annexure I to the Rules, the Authority may move to the third method of determining normal value on any reasonable basis, when it has exhausted the first method, that is, price or constructed value in third country, and second method, that is, price from third country to other countries, including India. However, it is noted that no reliable information/evidence has been provided by the parties for the construction of the normal value on the basis of the first two methods. Imports from third country to India is also nil, since the subject country has 100% share in imports. Therefore, the Authority has not been provided with information regarding the price or constructed value of the subject goods in a market economy third country, or the price from such third country to other countries, including India by any of the interested parties including domestic industry. In the absence of the information/evidence, it is not possible for the Authority to determine normal value on the basis of the first or second method. Therefore, the Authority has decided to construct normal value based on the third method, i.e., *on any other reasonable basis*. The normal value so determined is provided in the dumping margin Table below.

G.3.2. <u>Determination of Export Price</u>

i. Export price for cooperating exporters/producers

i. <u>Jiangyin Tinze New Energy Technology Co., Ltd</u>

59. Jiangyin Tinze New Energy Technology Co., Ltd. (Tinze) is a producer of the subject goods in China PR. Tinze has exported the subject goods directly to un-related customers in India.

60. During the POI, Jiangyin Tinze New Energy Technology Co., Ltd., has exported ***MT of invoice value ***US$ of subject goods to India directly. The producer/exporter has claimed adjustments on accounts of ocean freight, insurance. inland transportation, credit cost, bank charges and port and other related expenses. Accordingly, the net export price at ex-factory level so determined is as shown in the Dumping Margin Table below

ii. <u>Jiangyin Yuanshuo Metal Technology Co., Ltd.</u>

61. M/s Jiangyin Yuanshuo Metal Technology Co., Ltd., ("Yuanshuo") is a producer of the subject goods in China PR. Yuanshuo has exported the subject goods directly to un-related customers in India.

62. During the POI, Jiangyin Yuanshuo Metal Technology Co., Ltd., has exported ***MT of invoice value *** US$ of subject goods to India directly. The producer/exporter has claimed adjustments on accounts of inland transportation, Credit Cost, bank charges and port and other related expenses. Accordingly, the net export price at ex-factory level so determined is as shown in the Dumping Margin Table below.

iii. Jiangsu Yuejia Metallic Technology Co., Ltd.

63. M/s Jiangsu Yuejia Metallic Technology Co., Ltd., (Yuejia) is a producer of the subject goods in China PR. Yuejia has exported the subject goods directly to un-related customers in India.

64. During the POI, Jiangsu Yuejia Metallic Technology Co., Ltd., has exported ***MT of invoice value ***US$ of subject goods to India directly. The producer/exporter has claimed adjustments on accounts of ocean freight, lower sulphur fee, insurance, inland transportation, credit cost, bank charges and port and other related expenses. Accordingly, the net export price at ex-factory level so determined is as shown in the Dumping Margin Table below.

iv. M/s Jiangyin Haihong Solid-FSW Co., Ltd. and M/s Jiangyin Haihong New Energy Technology Co., Ltd. (Haihong Group)

65. M/s Jiangyin Haihong Solid-FSW Co., Ltd. (Haihong Solid) is a producer of the subject goods in China PR. Haihong Solid has exported the subject goods through a related exporter/trader namely, Jiangyin Haihong New Energy Technology Co., Ltd., China PR on ex-work basis.

66. During the POI, Jiangyin Haihong Solid-FSW Co., Ltd. has exported *** MT of invoice value *** RMB of subject goods to India indirectly through a related exporter/trader namely, Jiangyin Haihong New Energy Technology Co., Ltd., China PR on ex-work basis.

67. It is further noted that Jiangyin Haihong New Energy Technology Co., Ltd., has exported *** MT of Invoice value *** US$ of subject goods to India directly on FOB basis, which is produced by itself. The producer/exporter has claimed adjustments on accounts of inland transportation, credit cost, bank charges and port and other related expenses. Accordingly, the weighted average of net export price at ex-factory level so determined is as shown in the Dumping Margin Table below.

v. M/s Jiaxing Youjia Metal products Co., Ltd. China PR and M/s Jiangyin Taihe New Energy Technology Co., Ltd (Taihe Group)

68. M/s Jiaxing Youjia Metal Products Co., Ltd. (Youjia) and M/s Zhejiang Jiaxing Taihe New Energy Technology Co., Ltd. (Taihe) are producers of the subject goods in China PR. Both have exported the subject goods directly to India.

69. During the POI, Youjia. has exported *** MT of invoice value ***US$ and Taihe has shipped ***MT of invoice value *** US$ of subject goods to India directly. The producer/exporter has claimed adjustments on accounts of inland transportation, credit cost, bank charges and port and other related expenses. Accordingly, the net export price at ex-factory level so determined is as shown in the Dumping Margin Table below.

ii. Export price non-cooperating producers/exporters

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

G.3.3. Determination of Dumping Margin

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

S. no.	**Particulars**	Import Qty	Normal Value	Export Price	Dumping Margin	Dumping Margin	Range
1	M/s Jiangyin Tinze New Energy Technology Co., Ltd	***	***	***	***	***	30-40
2	M/s Jiangyin Yuanshuo Metal Technology Co., Ltd	***	***	***	***	***	20-30
3	M/s Jiangsu Yuejia Metallic Technology Co., Ltd	***	***	***	***	***	20-30
4a	M/s Jiangyin Haihong New Energy Technology Co., Ltd	***	***	***	***	***	50-60
4b	M/s Jiangyin Haihong Solid-FSW Co., Ltd.	***	***	***	***	***	10-20
4	**Haihong Group Combined**	*******	*******	*******	*******	*******	**40-50**
5a	M/s Zhejiang Jiaxing Taihe New Energy Technology Co., Ltd.	***	***	***	***	***	20-30
5b	M/s Jiaxing Youjia Metal products Co, Ltd	***	***	***	***	***	10-20
5	**Taihe Group Combined**	*******	*******	*******	*******	*******	**20-30**
6	Others	***	***	***	***	***	40-50

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

H. EXAMINATION OF INJURY

H.1. Submissions by the other interested parties

73. The other interested parties have submitted as follows with regards to injury and causal link.

i. It was submitted that the domestic industry has not suffered material injury in the current investigation. All volume related parameters such as production, capacity utilization, domestic sales, productivity, no. of employees etc. have significantly increased over the injury investigation period.

ii. The evidence submitted by the applicant did not establish a significant price effect under Article 3.2 of ADA and Para (ii) of the Annexure II to the Rules.

iii. No details/evidence provided by the domestic industry as part of the application for the interested parties to assess the increase of imports either in absolute terms or in relative terms.

iv. The applicant acknowledged in the application that the sales volume of the domestic industry has increased over the injury investigation period and therefore there is no injury with respect to sales volume of the domestic industry.

v. The applicant has admitted that number of employees and as well as wages paid to them have increased over the injury investigation period.

vi. The losses of the domestic industry have significantly improved over the injury investigation period. Similarly, ROCE and cash profit of the domestic industry have also followed the same trend and have improved.

vii. The market share of the domestic industry has increased in the POI as compared to the base year. Further, the rate of increase in both sales and market share of the domestic industry is significantly higher than the rate of increase in demand.

viii. As per their application, Vishakha has claimed material retardation in the said investigation. Vishakha commenced commercial production in the year 2021-2022 and has therefore alleged that the imports are hampering its establishment. In this regard, the respondent submits that there is an absence of material retardation in the present case.

ix. The initiation notification has not clarified the basis on which the domestic industry was considered as unestablished industry. Mere a statement by the applicant that the imports from the subject country are materially retarding them is not sufficient to initiate an investigation of material retardation.

x. In the present case, the petitioner commenced commercial production in March 2021. Since the petitioner is a new producer in the country and commenced commercial production in the last year of injury period, the performance of the domestic industry could have been impacted by start-up operations & other reasons and not due to any dumping.

xi. While it is evident that the industry in question has been fairly established and they cannot evoke provisions relevant for injury in the form of material retardation of the establishment of an industry, the facts as provided in the petition shows that the performance of the industry was not materially retarded. A situation of retardation signifies the performance being held back or delayed whereas in the present case

exuberant performance is evident and all the injury parameters have shown exponential growth over the injury period and within the POI. Thus, it is baseless allegation that the industry was materially retarded.

xii. Key parameters of injury have been on an upward trajectory or depicted a strong level and such trends cannot be termed as situations of material retardation in any manner. The Authority may conclude based on the injury parameters that there has been no injury in the form of material retardation of the establishment of the industry.

H.2. <u>Submissions by the domestic industry</u>

74. The domestic industry has made the following submissions with regard to injury and causal link.

i. The data on record clearly demonstrates that the dumped imports from the subject country has caused significant injury to the domestic industry.

ii. There has been a constant increase in the volume of imports of the PUC from the subject country. The imports have increase both in absolute and relative terms.

iii. The landed value of imports continues to undercut the prices of the subject goods in the country.

iv. The import prices from China are much below the cost of production and net sales realization of the domestic industry indicating clear price suppression/depression. The price underselling has been positive and significant.

v. There has been significant negative impact of the imports on the economic parameters of the domestic industry. The domestic industry has severely unutilized capacity despite there being sufficient demand of the PUC in the country.

vi. The price pressure put by the imports has ensured that the domestic industry has not been able to increase its selling price leading to significant losses and negative ROCE.

vii. The low-priced imports have put the domestic industry in a peculiar position where whenever the domestic industry makes attempt to get a decent market share, it is forced to sell its product at losses. This phenomenon is clearly visible in the POI where the domestic industry was able to increase its sales but it remained in losses on account of lower selling price.

viii. Any improvement in few parameters of the domestic industry cannot be construed to mean that there is no injury to the domestic industry. In terms of the settled WTO

jurisprudence, past practice of the Authority and the precedents of the courts in India, the examination of injury parameters cannot be done in a tick-mark approach as purported to be done by the interested parties.

ix. None of the interested parties has provided any evidence on record as to how the domestic industry has suffered injury due to factors other than dumping from the subject country. Only bare unsubstantiated statements have been made. Therefore, the submissions of the interested parties are required to be ignored.

x. It is an established practice of the Authority that in material retardation cases, a comparison of the actual and projected performances of the domestic industry gets a higher degree of importance as the industry is considered to be nascent and developing apposite developed. In this regard, in Anti-dumping investigation (Material-Retardation) concerning imports of "Vinyl Tiles other than in roll or sheet form" originating in or exported from China PR, Taiwan and Vietnam [F. No. 6/17/2021-DGTR, dated: 23'January, 2023].

xi. The applicant submits that its performance vis-à-vis the project report has been dismal. Instead of projected profits, the applicant is suffering significant losses. Further, significant capacities of the applicant remain dormant despite there being significant demand of the PUC in the country.

xii. The exporters from the subject country have not increased the prices of the subject goods despite increase in the prices of the raw material and international freight, in order to prevent the domestic industry from gaining a foothold in the market. As a result, the imports are materially retarding the establishment of industry in India.

xiii. The low price of imports prevented the domestic industry from selling at reasonable price. Since the domestic industry is new in the market, it has no option but to sell its product in the market to reduce its fixed cost. Therefore, the domestic industry is forced to compromise on its prices, to gain a place in the market. Due to this, the domestic industry has been forced to sell at losses.

xiv. As regards the submission of the parties that the domestic industry has not faced any injury as most of the parameters of injury are positive, the applicant submits that owing to the nascent stage of the industry and the recent commencement of operations, it is but natural for the individual parameters to show improvement. However, as held by the Authority in Vinyl Tyles (supra), the thrust of a material retardation investigation is to find out whether the industry has been able to achieve the projected performance and what would have been the industry's position in the absence of dumping.

H.3. <u>Examination by the Authority</u>

75. The Authority has taken note of the submissions made by the interested parties and has examined various parameters in accordance with the Rules after duly considering the submissions made by the interested parties.

76. Rule 11 of the Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, *"…. taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles…."*. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.

77. As regards the contention of the interested parties that there has been considerable improvement in the volume related parameters of the domestic industry and the parameters such as capacity utilization, market share, employment and wages etc., the Authority notes that the improvement in such parameters is largely on account of the commencement of the production by the applicant in 2021-22.

78. The Authority further notes that the present case is of material retardation of the establishment of an industry and not of material injury.

H.3.1 Material Retardation to the establishment of the industry

79. Article 3 of the WTO Agreement on the implementation of Article VI of the GATT provides no definition for 'material retardation'. The footnote 9 to Article 3 merely states as follows:

> *"Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article."*

80. Similar is the case with the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, wherein Annexure II merely clubs 'material injury', 'threat to material injury' and 'material retardation' under the definition of 'injury'. There is no further explanation as to what constitutes material retardation to the establishment of an industry.

81. In *Morocco – Anti-Dumping Measures* on Certain Hot-Rolled Steel from Turkey, the WTO Panel has given some guidance on determining whether there is establishment of an industry. The Panel observed that Article 3.1 does not prescribe a specific methodology for determining whether an industry has been established. The Authority is allowed to use any reasonable methodology which is based on assumptions and inferences. However, these inferences must be based on facts and positive evidence.

82. The issue before the Panel was regarding the "establishment" of an industry for the purpose of determination of "material retardation". The Panel observed that the Authority has the discretion in deciding which parameters are relevant to determine whether a new industry has been established. One of the parameters considered to be relevant by the Panel was whether the production constitutes a new 'product line' of an existing company. If an existing industry/company merely introduces a new product line, this may not be considered as an "unestablished industry". To examine this factor, the Authority would have to look into the degree of overlap in the use of overall infrastructure of the producer (including customer contacts, distribution channels, existing productive, commercial, research, and administrative assets etc.). A greater degree of overlap with the old infrastructure would mean that it is less likely that a new industry has been established. The relevant portion of the Panel's observation is as under:

> *"7.211. We note, at the outset, that we do not pronounce ourselves on these factors or whether they are either prescriptive or definitive for determining whether the domestic industry is unestablished. We accept that a relevant factor may be whether the domestic industry is the only producer of the like product in question in the market. At the same time, we note that whilst there could be only one producer of that product in the market, where that product constitutes merely a new "product line" of an existing industry and benefits from the existing production, marketing and other operations, such shared operations may play an important role in determining whether a distinct new industry has been established. If an existing industry chooses to introduce a new product unlike any other product currently being produced, the introduction of that new product will not necessarily result in the creation of a new industry. It may still be perceived as the introduction of a new product line into the existing industry, depending on the degree to which the overall infrastructure (including the productive, commercial, research, and administrative assets) of the existing industry is implicated. The greater the degree of overlap in the use of overall infrastructure, the less likely the perception that the introduction of the new product marks the establishment of a new industry. The fact that a domestic industry is defined by Article 4.1 of the Anti-Dumping Agreement by reference to like product, and that there are no pre-existing producers of that like product in the domestic market, does not preclude the possibility of that domestic industry utilizing existing infrastructure, such as customer contacts and distribution channels, in its introduction of that like product in the domestic market."*

83. Therefore, one of the aspects that has to be seen in determining whether or not the industry is in existence is whether the product constitutes merely a new product line within an existing industry. If this is the case, the Authority must analyse the level of overlap with the overall use of the existing infrastructure in the new product line.

H.3.2 <u>Material Retardation to the establishment of the industry</u>

84. The Authority notes that prior to the commencement of production in India, the entire demand for the subject good in India was being satisfied by the imports. The domestic industry started production in 2021-22. Even though the production by the domestic industry of the subject goods has commenced in India, yet their performances are much below the projected figure as evident from the examination comparison of their project report with their actual performance.

a. Commencement of production by the domestic industry.

85. In the first year of production, the domestic industry was projected to operate at ***% capacity utilization. In the second year of operation, the capacity utilization was projected to be at ***%. However, the domestic industry has not even achieved the capacity utilization projected for 2021-22 during the POI. As against the projected capacity utilization of ***%, the domestic industry has merely been able to utilise ***% of its capacities.

b. Whether the production of the subject goods is merely a new product line in an existing industry?

86. The WTO Panel has observed that if the production of the industry is merely a new product line in an existing industry, it may not be a case of material retardation. However, the Panel stressed that what is important is the degree to which the existing infrastructure is utilized for the production of the product under consideration. The domestic industry had set up a new manufacturing plant for the subject goods and started commercial production in financial year 2021-22. Thus, the production of the subject goods cannot be stated to be a new product line in an existing industry.

c. Stability of production

87. The Authority notes that the production of the domestic industry started during the injury period. The analysis of the production and sales of the domestic industry shows that it has failed to achieve the projected capacity utilization.

88. As regards the contention that certain performance parameters of the domestic industry such as production, capacity utilization, market share etc. have increased in the POI as compared to the previous year, the Authority notes that the performance of the domestic

industry is expected to improve considering that it commenced production of the subject goods in the previous year itself (2021-22). Any producer is expected to take steps to improve its performance. As a result, thereof, certain indices may show positive outlook. Thus, improvement in certain parameters of the domestic industry is clearly reflective of the efforts made by them to establish itself in the market.

89. The Authority further notes that the phrase retardation means the process of making something happen or develop slower than it should be. Thus, in order to examine whether the imports have materially retarded the establishment of industry, the relevant aspect is not whether the industry showed some progress but the relevant aspect is its performance as against the projections made in project report. For this purpose, the Authority has compared the actual performance of the domestic industry with its projected performance.

90. As noted hereinabove, the capacity utilization of the domestic industry has been much below the projected levels in the POI and the previous year. The production and sales of the domestic industry is also almost half of what was projected in the project report. Further, instead of projected profits and positive ROI, the applicant has faced significant losses and negative ROI.

91. With regard to the injury assessment, the WTO Panel has given the following guidance:

> *"7.233. Further, we consider that the obligation in Article 3.4 to evaluate each of the listed 15 injury factors applies as much to an investigation of injury in the form of material retardation as it does to that of material injury or threat of material injury. This is so for the following reason: Article 3.1, read in light of footnote 9 of the Anti-Dumping Agreement, requires that a determination of material retardation be based on positive evidence and objective examination of inter alia "the consequent impact of [dumped] imports on domestic producers". As explained above, the examination of the impact of dumped imports on domestic industry, in turn, must, in accordance with the terms of Article 3.4, include an evaluation of all relevant factors including the 15 injury factors listed in that provision. It follows that a determination of material retardation must be based on an examination of the impact of dumped imports on domestic producers, and that examination must include an evaluation of the 15 injury factors listed in Article 3.4. Our approach is consistent with the finding by the panel in Egypt – Steel Rebar that "the Article 3.4 factors must be examined in every investigation, no matter which particular manifestation or form of injury is at issue in a given investigation". Nothing in the text of Article 3 supports Morocco's argument that an investigating authority is not required to address the Article 3.4 factors "with the same rigor" in a material retardation analysis as in a material injury analysis."*

92. In view of the above, the Authority has examined the injury factors as contemplated under the Rules. The detailed injury analysis carried out by the Authority hereunder addresses the various submissions made by the interested parties.

I. Volume effect of the dumped imports

93. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. The import volumes of the subject goods from the subject country and share of the dumped imports during the injury investigation period are as follows:

Particulars	UoM	2019-20	2020-21	2021-22	POI
Imports from China	MT	9283	10839	19272	19740
Imports from other countries	MT	25	-	-	-
Total Imports	MT	9308	10839	19272	19740
% share of China in Imports	%	99.73%	100.00%	100.00%	100.00%
% share of Other Countries in Imports	%	0.27%	0.00%	0.00%	0.00%

94. The imports from the subject country have more than doubled during 2021-22 with a marginal increase in the POI. The Chinese imports command 100% share in total imports.

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

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Imports from subject country	MT	9,283	10,839	19,272	19,740
Domestic Production	MT	-	-	***	***
Trend	Index			100	182
Total Indian Production	MT	-	-	***	***
Trend	Index			100	182
Demand	MT	***	***	***	***
Trend	Index	100	116	212	260
% Share of subject country in relation to domestic production	%	-	-	***	***
Trend	Index			100	56
% Share of subject country in Total Demand	%	***	***	***	***

Trend	Index	100	100	97	82

96. The Authority notes from the above that the volume of imports from China PR have increased significantly during the injury investigation period. The imports from the subject country relative to production and consumption remains significantly high despite commencement of production by the domestic industry and their significant capacities remaining unutilised.

III. Price effect of the dumped imports

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

a. Price undercutting

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Landed price of imports	Rs/MT	150260	218012	242229	288231
Trend	Index	100	145	161	192
Net selling price of the domestic industry	Rs/MT	-	-	***	***
Trend	Index			100	90
Price undercutting	Rs/MT	-	-	***	***
Trend	Index			100	33
Price undercutting	%	-	-	***	***
Trend	Index			100	27
Price undercutting	Range	-	-	50-60	10-20

99. It is noted from the above that price undercutting is positive in the POI and the previous year. The price undercutting has declined significantly in the POI, however, the same remains significant.

b. Price suppression/depression

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Cost of Sales	Rs/MT	-	-	***	***
Trend	Indexed	-	-	100	81
Selling Price	Rs/MT	-	-	***	***
Trend	Indexed	-	-	100	90
Landed Value from Subject Country	Rs/MT	150260	218012	242229	288231
Trend	Indexed	100	145	161	192

101. It is seen that imports from the subject country are priced much below the cost of sales of the domestic industry. The landed value of import is also significantly below the selling price of the domestic industry. The selling price of the domestic industry has also been below the cost of production. The Authority notes that the subject goods are preventing the domestic industry from increasing their prices to a remunerative level. Thus, the imports have depressed the domestic prices of the subject goods in the country.

IV. Economic parameters of the domestic industry

102. Annexure II to the Rules provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Various injury parameters relating to the domestic industry are discussed below.

a. Changes in Market Share held by the Indian Producers

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Imports from China	MT	9,283	10,839	19,272	19,740
Imports from other countries	MT	25	-	-	-
Total Imports	MT	9,308	10,839	19,272	19,740
Sales of Domestic Industry	MT	-	-	***	***
Trend	Indexed			100	879
Sales of Other Domestic Producers	MT	-	-	-	-

Total Indian Domestic Sales of	MT	-	-	***	***
Trend	Indexed	-	-	100	879
Demand	MT	***	***	***	***
Trend	Indexed	100	116	212	260
Share in Demand					
Imports from China	%	***	***	***	***
Trend	Index	100	100	98	82
Imports from other countries	%	***	***	***	***
Trend	Index	100	0	0	0
Total Imports	%	***	***	***	***
Trend	Index	100	100	97	82
Total Domestic Sales	%	***	***	***	***
Trend	Index	-	-	100	718

104. The Authority notes that the market share of domestic industry has increased. However, the same is on account of the fact that they started commercial production in 2021-22. The Authority further notes that the subject country continues to enjoy majority of the market share despite significantly unutilised capacities with the domestic industry.

b. Output and Capacity Utilization

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Capacity	MT	-	-	***	***
Production	MT	-	-	***	***
Capacity Utilization	%	-	-	***	***
Trend	Index	-	-	100	183

106. The Authority notes that the capacity utilization of the domestic industry has increased in the POI as compared to the previous year. However, the same is expected since the domestic industry started its production in 2021-22. The Authority further notes that almost half of the capacities of the domestic industry remain unutilised.

c. Inventories

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Inventories	MT	-	-	***	***
Trend	Indexed	-	-	100	135

108. It is seen that the average inventories of the domestic industry have increased marginally.

d. Employment, wages and productivity

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Production	MT	-	-	***	***
Employees	Nos	-	-	***	***
Trend	Indexed	-	-	100	140
Production/Employee	MT	-	-	***	***
Trend	Indexed	-	-	100	130
Wages	Rs. Lacs	-	-	***	***
Trend	Indexed	-	-	100	215

110. It is seen that the production of the domestic industry has increased. The number of employees and the wages paid to them has also increased. However, such increase is expected on account of the fact that the industry is at nascent stage and has just begun commercial production in 2021-22. The productivity of the domestic industry has improved and the same is not a cause of injury.

e. Sales Volume & Value

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Sales	MT	-	-	***	***
Selling Price	Rs/MT	-	-	***	***
Trend	Indexed	-	-	100	90

112. It is noted that the domestic sales of the domestic industry have improved during the injury investigation period. However, there has been a decline in the selling price of the domestic industry when compared to the base year. The cost of sales has also declined.

f. Profitability, cash profits and return on capital employed

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

Particulars	UoM	2019-20	2020-21	2021-22	POI
Profit & Loss	Rs. Lacs	-	-	(***)	(***)
Trend	Index	-	-	-100	-182
Profit & Loss	Rs./MT	-	-	(***)	(***)
Trend	Index	-	-	-100	-21

Cash Profit	Rs. Lacs	-	-	(***)	(***)
Trend	Index	-	-	-100	-124
Cash Profit	Rs./MT	-	-	(***)	(***)
Trend	Index	-	-	-100	-14
PBIT	Rs. Lacs	-	-	(***)	(***)
Trend	Index	-	-	-100	-93
PBIT	Rs./MT	-	-	(***)	(***)
Trend	Index	-	-	-100	-11
Return on Capital Employed (ROCE)	%	-	-	(***)	(***)
Trend	Index	-	-	-100	-92

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

i. The selling price of the domestic industry has continued to be below the cost of sales leading to losses.

ii. The overall losses of the domestic industry have increased, however, per unit losses have decreased.

iii. The losses of the domestic industry have declined during the POI but the domestic industry is still not recovering the cost of production.

iv. The ROCE of the domestic industry remained more or less same and was negative during the POI and previous year.

g. Growth

115. The performance of the domestic industry has improved in some of the volume parameters such as production, sales, and capacity utilization. The performance of the domestic industry has also improved with respect to the profitability and ROCE. However, the market share of the domestic industry has seen a significantly negative growth. Further, the profitability and ROCE of the domestic industry remain to be in negative despite improving upon the previous years. The Authority notes that the performance of the domestic industry is expected to improve considering that it had recently commenced production of the subject goods. Any producer is expected to take steps to improve its performance as regards its production and sales over the period. As a result, thereof, the capacity utilization gradually improves. Thus, the increase in production and sales over the injury period is clearly reflective of the efforts made by the domestic industry to establish itself in the market.

Particulars	**(POI)**
Production (MT)	82%
Domestic Sales (MT)	779%

Profit/(Loss) per unit (RS/MT)	79%
Inventory	35%
Market share of DI (Applicant) in total demand (%)	619%
Profit/(Loss) (Rs. In Lakh)	-82%
Cash Profit (Rs. In Lakh)	-25%
Cash Profit per unit (RS/MT)	86%
PBIT (Rs. In Lakh)	7%
PBIT per unit (RS/MT)	89%
ROCE%	8%

h. Ability to raise capital investment

116. The Authority notes that the domestic industry is not able to recover its cost while selling the subject goods. The import prices are much below the cost of production.

i. Factors affecting prices

117. The Authority notes that the volume of imports during the period of investigation was significant and such imports were at prices significantly below the cost of production of the domestic industry. Selling price of the domestic industry has been severely affected by the subject imports.

j. Magnitude of dumping

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

I. MAGNITUDE OF INJURY MARGIN

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

Sr No.	Particulars	Import Qty	NIP	Landed Value	Injury Margin	Injury Margin	Range
1	M/s Jiangyin Tinze New Energy Technology Co., Ltd	***	***	***	***	***	10-20
2	M/s Jiangyin Yuanshuo Metal Technology Co., Ltd	***	***	***	***	***	10-20
3	M/s Jiangsu Yuejia Metallic Technology Co., Ltd	***	***	***	***	***	10-20
4a	M/s Jiangyin Haihong New Energy Technology Co., Ltd	***	***	***	***	***	10-20

4b	M/s Jiangyin Haihong Solid-FSW Co., Ltd.	***	***	***	***	***	10-20
4	**Haihong Group Combined**	*******	*******	*******	*******	*******	**10-20**
5a	M/s Zhejiang Jiaxing Taihe New Energy Technology Co., Ltd.	***	***	***	***	***	10-20
5b	M/s Jiaxing Youjia Metal products Co, Ltd	***	***	***	***	***	0-10
5	**Taihe Group Combined**	*******	*******	*******	*******	*******	**10-20**
6	Others	***	***	***	***	***	10-20

J. CONCLUSION ON INJURY

120. The Authority notes that the volume of imports has increased in absolute terms during the whole injury period. The volume of imports in relation to production and consumption in the country has decreased but the same is on account of commencement of operations by the Domestic Industry. The subject imports has affected the profitability, ROCE and other parameters of the domestic industry indicating substantial price injury. The domestic industry is suffering financial losses in the POI. Therefore, the Authority concludes that the domestic industry has suffered injury and the material retardation to the establishment of the domestic industry in India is caused by the dumped imports.

121. The examination of the imports of the product under consideration and performance of domestic industry clearly shows that:

i. The imports have remained high over the injury period and have almost doubled since the base year.
ii. The imports have remained high in relation to consumption in India despite there being excess unutilised capacities with the domestic industry.
iii. Despite commencement of commercial production by the domestic industry in 2021-22, the volume of subject imports has increased in the said year as well as in the period of investigation.
iv. The price undercutting is positive when compared to the actual and target price of the domestic industry.
v. The landed price of imports is below the cost of production and selling price of the domestic industry. The imports of subject goods from subject country has depressed the prices of the subject goods in India. Since landed price is below the actual cost of sale, the import price is causing a strain on the prices of domestic industry.
vi. Significant capacities of the applicant remains unutilised and they were not able to achieve the projected capacity utilization.
vii. The domestic industry is suffering losses and have negative ROCE. They were prevented from achieving projected profits and ROCE on account of dumped imports.

viii. The imports of subject goods from subject country are materially retarding the establishment of the domestic industry in India.

ix. Since the domestic industry has commenced commercial production in 2021-22 only, some of the injury parameters are positive for the period of investigation.

x. As compared to projected profits, return on capital employed and capacity utilization, the current performance of domestic industry during the POI is significantly on lower side.

xi. The subject imports are being dumped in India and the dumping margin is positive and significant.

xii. The imports have adversely impacted the domestic industry ability to raise capital investment.

xiii. At current prices, the domestic industry will not be able to achieve its projected performance.

K. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS

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

a. Volume and price of imports from third country

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

b. Contraction in demand

124. It is noted that the demand of the subject goods has increased throughout the injury investigation period.

c. Changes in pattern of consumption

125. There has been no material change in the pattern of consumption of the product under consideration.

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

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

e. Export performance

127. The Authority has considered data for the domestic operations only.

f. Productivity

128. The Authority notes that the productivity of the domestic industry has improved during the injury investigation period. Thus, the same could not have caused injury to the domestic industry.

g. Performance of other products of the company

129. The performance parameters of the domestic industry considered in the present findings are based upon the performance for the product under consideration only. Thus, any injury on account of other products of the company are not of relevance.

L. ANALYSIS BY THE AUTHORITY ON CAUSAL LINK

130. It is thus noted that above listed known other factors do not show that the domestic industry could have suffered injury due to these other factors. The Authority examined whether the dumping of the product has caused injury to the domestic industry.

i. Imports of the subject goods from the subject country has increased in absolute terms and remained substantially high in relation to production and consumption.
ii. The dumped imports of the subject goods from the subject country still accounts for significant market share despite having presence of the domestic industry in the Indian market. In fact, the share of domestic industry has not increased in proportion to their available capacity during the relevant period due to aggressive pricing from the exporters of the subject country.
iii. The Authority notes that the price undercutting is positive from the subject country. It is also noted that landed price of subject goods from the subject country have suppressed the selling price of domestic industry, and as a result, the domestic industry is selling the subject goods at a price below its cost of sales and incurring losses.
iv. The positive price underselling along with significant increase in the volume of dumped imports from the subject country has, thus, resulted in losses, negative cash flow and return on capital employed of the domestic industry.

M. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

131. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic producers, and help maintain availability of wider choice to the consumers of the subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Further, the Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.

132. The Authority considered whether imposition of anti-dumping duty shall have significant adverse public interest. For the purpose, the Authority examined the information on record pertaining to the interests of various parties, including the domestic industry, other domestic producers, importers and consumers of the product.

133. The Authority issued gazette notification inviting views from all interested parties, including importers, consumers, and other interested parties. The Authority also prescribed a questionnaire for the consumers to provide relevant information regarding the present investigations, including possible effect of anti-dumping duty on their operations. The Authority sought information on, *inter-alia* interchangeability of the product supplied by various suppliers from different countries, ability of the domestic industry to switch sources, effect of anti-dumping duty on the consumers, factors that are likely to accelerate or delay the adjustment to the new situation caused by imposition of anti-dumping duty.

134. From the data on record, it is noted that the imposition of the anti-dumping duties would not impact the user industry as well as the public at large. The domestic industry claimed that the impact of duties on the end consumers will be negligible and will not impact them, this has not been challenged by any of the interested parties by providing counter data / evidence. However, imposition of the duties will give legitimate protection to the domestic producers of the subject goods. According to the calculation provided by the domestic industry, current anti-dumping duties will have an impact of around 0.59% on the end user, which in insignificant by any standards.

Particulars		**Quantum/value**
Aluminium Frame	A	3.2 KG
Sale Price of Aluminium Frame	B	Rs.***/Frame
Value of Solar Module	C	Rs.15000/Module

Value of other components (Junction Box, inverter, battery, cables, mounting structure etc.)	D	Rs. 14000/Module
Total Value of the establishment	E=C+D	29,000/Module
Aluminium Frame cost as a % of the total value of the Establishment	F=B/E	***%
Quantum of ADD at 20%	G=B*20%	Rs.170/Module
Impact of ADD on End Customer as Compared to the Value of Establishment	H=G/E	0.59%

135. From the above, it is clear that the even if duty of 20% recommended on imports of subject goods, it has insignificant impact on the user industry. However, these duties will give protection to the domestic industry from dumped and injurious imports from the subject country.

N. POST-DISCLOSURE SUBMISSIONS

136. The Authority issued the disclosure statement on 24th June 2024, disclosing essential facts under consideration in the investigation and inviting comments from all the interested parties. Most of the issues raised in the post-disclosure comments have already been raised earlier and addressed appropriately hereinabove. Additional submissions to the extent relevant have been examined below:

N.1. Submissions of the other interested parties

137. Following submissions have been made by the other interested parties:

a. The exporters and the importer Avaada have submitted that the Authority has incorrectly stated that the evidence regarding the relationship of the domestic industry with the importers was disclosed for the first time during the stage of rejoinder submissions. They have stated that they provided evidence in the form of care rating report in their written submissions and other submissions.

b. The exporters have stated that they have provided evidences with respect to the relationship of the domestic industry with importers through their rejoinder statement as well as through their letter dated 05.06.2024.

c. The exporters have stated that they did not provide the domestic industry the evidences relating to their relationship with the importers because they were able to procure such evidence after extensive research by the stage of rejoinder submission only. Since

rejoinder submissions are not shared between parties, they also followed the same practice.

d. The interested parties have reiterated their submissions relating to the relationship of the applicant with the importers of the subject goods.

e. The interested parties have stated that there will be significant demand supply gap despite the expansion of the capacities by the applicant. They have also stated that it will take time for Hindalco to start commercial production of the subject goods.

f. The importer has stated that the impact analysis regarding imposition of anti-dumping duty provided by the applicant is incorrect since the same does not take into account the anti-dumping on other raw materials and price comparison between solar power and thermal power.

g. The exporters have stated that they have evidence depicting that the applicant has imported the subject goods from China PR post period of investigation in significant quantities.

h. Haihong group and Yuejia Metallic have raised issue regarding their landed value and export price. They have stated that the Authority has worked out their landed value and export price much below what was claimed by them.

i. The exporters have submitted that despite presenting compelling evidence, including Ministry of Corporate Affairs documents demonstrating dual registrations under nearly identical names with a shared director by the applicant, the disclosure statement issued by the Authority has conspicuously overlooked this critical point. This omission is concerning as it suggests a potential oversight in the Authority's examination of crucial aspects that could impact the fairness and integrity of the anti-dumping investigation.

j. The exporters have stated that the NIP of the domestic industry allowed by the Authority is more than the NIP claimed by the domestic industry. They have stated that the Authority cannot allow more NIP to the domestic industry than what has been claimed by the domestic industry without disclosing reasons for the same.

k. The Authority has not provided adequate time for filing comments on the disclosure statement.

N.2. Submissions of the domestic industry

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

a. The domestic industry has raised concerns regarding the repeated submission of new evidences and submissions by the exporters behind the back of the domestic industry.

They have stated that as per the disclosure statement certain evidences which were provided by the exporters for the first time through their rejoinder submissions has been taken on record by the Authority. They have stated that such submissions and evidences, till date have not been provided to the domestic industry by the exporters.

b. The domestic industry has stated that the exporters failure to adhere to the prescribed procedure was continued by them even after the issuance of the disclosure statement when they shared submissions regarding the NIP of the domestic industry through e-mail. Such submissions having direct relationship with the NIP of the domestic industry, should have been shared with the domestic industry by the exporters. However, no such submission was shared by them.

c. The exporters have not shared the submissions and evidences placed before the Authority with the domestic industry with the sole intention of misleading the Authority and deprive the domestic industry from any opportunity to highlight the willful manipulation attempts of the exporters or to refute the mis-statements and selectively presented excerpts.

d. The domestic industry has stated that the submissions made by the exporters cannot be taken on record and are liable to be rejected as the consideration of the same would seriously prejudice the interest of the domestic industry while also being breach of Rule 7 and principles of natural justice.

e. The disclosure statement clearly brings out the fact that the Chinese exporters have dumped the subject goods which lead to materially retarding the establishment of the industry in India. It is also clear that the domestic industry has suffered injury with respect to most of the injury parameters.

f. The prices of the subject goods are highly volatile on account of the fluctuating prices of the principal raw material namely, Aluminium. Therefore, a reference price-based duty shall not be logical in the present case. Further, the *ad-valorem* duty has the distinct possibility of undermining the effect of the duties by resorting to under-invoicing by the exporters and importers. The domestic industry has requested the Authority to recommend for imposition of duties on fixed duty rate as per its consistent practice.

g. The exporters are willingly and knowingly trying to mislead the Authority regarding the NIP. It may be noted that the NIP figure (3,17,941) stated in the letter filed by the exporters is from the updated NCV filed by the domestic industry. However, the exporters have hidden the fact that the table itself states that such figure is not the actual NIP of the domestic industry. Even in the letter filed by the exporter, the NIP disclosed contain two asterisk which is explained just below the table stating "** aggregate actual data has been provided in actual figure range - ± 10%".

N.3. Examination by the Authority

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

i. As regards the submissions of the interested parties that it is incorrect that they did not provide any evidence with respect to the relationship of the domestic industry with the importers of the subject goods, the Authority notes that the evidences provided by the interested parties before the rejoinder submissions only contained care ratings report. The said report nowhere indicates any relationship between the importers of the subject goods and the domestic industry. It was only at the rejoinder stage that the exporters, for the very first time, provided the excerpts of the annual reports of certain companies which allegedly indicated that the applicant is related to some of the importers. However, upon examination, the Authority found that the said excerpts were indicating relationship as per Indian accounting standards. Further, the said relationship issue has already been examined by the Authority in the relevant paras of this final findings.

ii. As regards the submission of the exporters that they did not share the relevant evidences with the domestic industry as they could only get hold of such evidences by the stage of rejoinder and it is the practice in the directorate to not share rejoinder submissions, the Authority notes that as per the principles of pleadings, no new submission or evidence can be filed in the rejoinder statement. However, if the exporter was not able to file the same before the rejoinder submissions, it should have shared a non-confidential version of such submissions and evidences with the domestic industry. Further, the exporter again did not provide a copy to the domestic industry while filing letter dated 05.06.2024 which reiterated such submissions and evidences filed by them.

iii. As regards the contention of the domestic industry that the submissions and evidences filed by the exporters with respect to the alleged relationship of domestic industry with importers cannot be taken on record, the Authority reiterates that in view of the implications of such allegations, it was necessary to examine the issue in detail as it has been done in the disclosure statement and reproduced in these findings.

iv. The Authority notes that post issuance of the disclosure statement, the exporters *viz.* Haihong group and Yuejia Metallic, wrote an email dated 26.06.2024 pointing out the discrepancies in the landed value and export price computed for them. In this regard, discussions were held with the representatives of the said exporters and the landed value and export price has been rectified appropriately.

v. As regards the submission of the exporters that they have evidence depicting that the domestic industry has imported the subject goods in post-POI period, the Authority notes that no evidence in this regard has been provided by the exporters except for a table. The exporters have neither provided any supporting evidences nor provided the source of such data. In any case, in the present case the entire examination of the Authority is restricted to the POI only.

vi. As regards the submission of the exporters regarding existence of another company having nearly the same name as the applicant, the Authority has looked at the MSME certificate of the said other company. The said company is registered for manufacturing of "copper from ore and other copper products and alloys". The said company is not engaged in any activity relating to the product under consideration.

vii. As regards the submission regarding the demand-supply gap, the Authority notes that it has already examined the said issue at appropriate place hereinabove.

viii. As regards the submission of the exporters that the NIP allowed to the domestic industry is more than the NIP claimed by them, it is noted that the said statement is factually incorrect. The NIP claimed by the domestic industry is more than what has been allowed by the Authority.

ix. As regards the submission of the exporters that sufficient time has not been given to them to file comments on disclosure statement, the Authority notes that the exporters were given personal audience after the issuance of the disclosure statement and their grievances have been addressed, to the extent necessary. It is further noted that considering the timelines of the investigation and time-bound nature of the anti-dumping investigations, the Authority has provided sufficient time to the parties to file their comments on disclosure statement.

x. The Authority notes that the importer, Waaree Energies has filed their written submissions, after the time provided for filing the comments on disclosure statement was already over. Considering the time bound nature of the investigation and fairness to the other interested parties, the Authority has decided to not consider the submissions made at belated stage by the said importer.

xi. As regards the request of the domestic industry for recommendation of the fixed rate of duty, the Authority has accepted such request and is recommending the duties on fixed price basis as indicated in the duty table.

O. CONCLUSION AND RECOMMENDATIONS

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

i. The product under consideration has been exported to India at a price below the normal value, resulting in dumping. The dumping margin is not only above *de-minimus* level but substantial also.

ii. The dumping of the subject goods has materially retarded the establishment of the domestic industry in India.

iii. The volume of the subject imports has increased even after the commencement of the commercial production in India.

iv. The imports are priced below the target prices of the domestic industry and have prevented the domestic industry from achieving a reasonable price.

v. At current prices, the domestic industry will not be able to achieve its target performance.

vi. The capacity of the domestic industry is significantly underutilized. They were not able to achieve even the projected capacity utilization of 2021-22 in 2022-23 (POI).

vii. Despite underutilized capacities, the domestic industry has not been able to sell the subject goods on account of unfairly priced imports.

viii. The performance of the domestic industry with regard to its profits, cash profits and return on investment is dismal.

ix. The dumped imports are adversely affecting the prices of the domestic industry.

x. The material retardation to the establishment of the domestic industry in India is caused by the dumped imports of subject goods from China PR.

xi. There is no evidence to show that the imposition of anti-dumping duty would materially impact the consumers or the downstream industry or the public at large.

xii. On the basis of the information provided by the interested parties and the investigation conducted, the Authority is of the view that imposition of the anti-dumping duty will not be against the public interest.

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

142. Having regards to the lesser duty rule followed, the Authority recommends imposition of antidumping duty equal to the lesser of the margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of anti-dumping duty on the imports of subject goods originating in or exported from the subject country for a period of five years from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below:

DUTY TABLE

S. No.	Heading/ sub-heading*	Description of goods	Country of origin	Country of Export	Producer/ exporter	Amount	Unit of measurement	Currency
1	2	3	4	5	6	7	8	9
1.	7610 9010, 7610 9030, 7616 9990	Anodized Aluminium Frames for Solar Panels/Modules	China PR	Any Country including China PR	Jiangyin Tinze New Energy Technology Co., Ltd	433	MT	USD
2.	-do-	-do-	China PR	Any Country including China PR	Jiangyin Yuanshuo Metal Technology Co., Ltd	505	MT	USD
3.	-do-	-do-	China PR	Any Country including China PR	Jiangsu Yuejia Metallic Technology Co., Ltd	403	MT	USD
4.	-do-	-do-	China PR	Any Country including China PR	Jiangyin Haihong New Energy Technology Co., Ltd Jiangyin Haihong Solid-FSW Co., Ltd.	418	MT	USD
5.	-do-	-do-	China PR	Any Country including China PR	Zhejiang Jiaxing Taihe New Energy Technology Co., Ltd. Jiaxing Youjia Metal products Co, Ltd	511	MT	USD
6.	-do-	-do-	China PR	Any Country including China PR	Any other than S. No. 1-5 above	577	MT	USD

7.	-do-	-do-	**Any Country other than China PR**	China PR	Any other than S. No. 1-5 above	577	MT	USD

**The Customs classification is indicative only and not binding on the scope of the product under consideration.*

143. The landed value of the imports for this purpose shall be the assessable value as determined by the Customs under Customs Act, 1962 and applicable level of the customs duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

P. FURTHER PROCEDURE -

144. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

(Anant Swarup)
Designated Authority