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F. No. 6/23/2023-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building,
5, Parliament Street, New Delhi -110001

Dated:06th August, 2024

Case No. AD (OI)- 22/2023

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of “Thermoplastic Polyurethane (TPU)” originating in or exported from China PR

F. No. 6/23/2023 -DGTR: - Having regard to the Customs Tariff Act,1975 as amended from time to time (hereafter also referred to as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereafter also referred to as the “ Rules”).

A. BACKGROUND OF THE CASE

1. Covestro (India) Pvt Ltd. (hereinafter also referred to as the “applicant” or the “domestic industry”) has filed an application before the Designated Authority (hereinafter referred to as the “Authority”), on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the “ Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the “Rules”), for initiation of an anti-dumping investigation concerning imports of **“Thermoplastic Polyurethane” (“TPU”)** (hereinafter referred to as the “subject goods” or “product under consideration” or “PUC”), originating in or exported from China PR (hereinafter referred to as the “subject country”).
2. The Authority, on the basis of sufficient *prima facie* evidence submitted by the applicant, issued a public notice vide notification no. 6/23/2023-DGTR dated 29th September 2023,

published in the Gazette of India- Extraordinary, initiating the subject investigation in accordance with Section 9A of the Act read with Rule 5 of the Rules to determine the existence, degree and effect of alleged dumping of the subject goods originating in or exported from the subject country and to recommend the appropriate amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The following procedure has been followed with regard to this investigation:
 - a. The Authority notified the embassy of the subject country in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Rule 5(5) of the Rules.
 - b. The Authority issued a public notice dated 29th September, 2023, published in the Gazette of India- Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods from the subject country.
 - c. The Authority sent a copy of the initiation notification to the embassy of the subject country in India, the known producers and exporters from the subject country, the known importers/users of the subject goods and other interested parties, as per the information provided by the applicant. The interested parties were requested to provide relevant information in the form and manner prescribed in the initiation notification and to make their submissions in writing within the time limit prescribed in the initiation notification.
 - d. The Authority provided a copy of the non-confidential version of the application filed by the applicant to the known producers/exporters, known importers/users and to the embassy of the subject country in India in accordance with Rule 6(3) of the Rules.
 - e. The embassy of the subject country in India was sent a copy of the letter and questionnaire sent to the producers/exporters with the request to advise the exporters/producers from their country to submit their responses to the questionnaire within the time limit prescribed by the initiation notification.
 - f. The interested parties were granted an opportunity to present their comments on the scope of the PUC and propose product control numbers (PCNs), if required, within a period of 15 days from the date of the circulation of the non-confidential application.

- g. The interested parties were granted an opportunity to present their comments on the issues of confidentiality claimed by the other interested parties within 7 days of the circulation of the non-confidential version of the document filed before the Authority.
- h. The Authority also issued an economic interest questionnaire (hereafter also referred to as 'EIQ') to the interested parties seeking inputs on the economic impact of the proposed duties.
- i. The Authority sent questionnaires to the following known producers/exporters in the subject country in accordance with Rule 6(4) of the Rules:
 - i. Wanhua Chemical Singapore Pte Ltd
 - ii. Shandong Inov Polyurethane Co Ltd
 - iii. Wanhua Chemical Group Co Ltd
 - iv. Shandong Huada Chemical New Material Co Ltd
 - v. Yantai Jinbei Chemicals Co. Ltd
 - vi. Baoding Bangtai Polymeric New-Materials Co Ltd
 - vii. Shandong Dawn Polymer Co Ltd
 - viii. Chuang Xin Trading Company Ltd
 - ix. Grand Dignity Industrial Co Ltd
 - x. Yantai Linghua New Material Co Ltd
 - xi. Ningbo Joan Import Export Co Ltd
 - xii. BASF Polyurethane Specialties China Co., Ltd.
 - xiii. Zhejiang Huafon TPU Co., Ltd.
 - xiv. Miracll Chemicals Co. Ltd
 - xv. Singbon New Materials (Shandong) Co., Ltd and Yantai Singbon New Material Technology Co., Ltd
- j. In response to the above notification, the following producers/exporters of the product under consideration from subject country have registered as an interested party;
 - i. BASF Polyurethane Specialties China Co., Ltd. (BAPS)
 - ii. BASF International Trading (Shanghai) Co., Ltd. (BITC)
 - iii. BASF Hong Kong Limited (BHKL)
 - iv. BASF Integrated Site (Guangdong) Co. Ltd (BISL)
 - v. Zhejiang Huafon TPU Co., Ltd. (Huafon)
 - vi. Miracll Chemicals Co. Ltd (Miracll)
 - vii. Yantai Singbon New Material Technology Co., Ltd
 - viii. Singbon New Materials (Shandong) Co., Ltd

- k. The Authority notes that Singbon New Materials (Shandong) Co., Ltd and Yantai Singbon New Material Technology Co., Ltd have registered themselves as interested parties but have not filed the questionnaire response. They have also not filed any submission during the course of the investigation.
- l. The Authority sent questionnaires to the following known importers/users of subject goods in India calling for necessary information, in accordance with Rule 6(4) of the Rules:
- i. G R Industries
 - ii. Polyhose India Pvt Ltd
 - iii. Tirupati Global International
 - iv. Sen Hon Lee Technologies Private Limited
 - v. Excel Polymer Industries
 - vi. Electra Enterprise Llp
 - vii. P V Engineering Associates Private Limited
 - viii. Lanshang Industrial Private Limited
 - ix. Calsea Footwear Private Limited
 - x. Globechem Imports
 - xi. BASF India Limited
 - xii. Le Mei Plastic Manufacturing Private Limited
 - xiii. Adani International
 - xiv. Saurav Footwear Private Limited
 - xv. Ms Chemical Corporation
 - xvi. Rajasthan Plastic Industries
 - xvii. Plasticent Marketing Private Limited
- m. The following importers/users have registered themselves as interested parties:
- i. BASF India Limited (BIL)
 - ii. Excel Polymer Industries
 - iii. Essentex Company
 - iv. Royal Marketing
- n. The following interested parties have not filed the questionnaire response but have submitted written submissions during the course of the investigation:
- i. Excel Polymer Industries
 - ii. Essentex Company
 - iii. Royal Marketing

- o. The following entities have neither registered as interested parties nor filed questionnaire response but have submitted written submissions during the course of the investigation
- i. Calsea Footwear Private Limited (Calsea)
 - ii. Gemini & Co. (Gemini)
 - iii. Enkay (India) Rubber Company Pvt. Ltd. (Enkay)
 - iv. Rajkot Mobile Cover Manufacturer Association (“RMCMA”)
 - v. PU Leather Cloth Manufacturers Association
- p. The producers/exporters from the subject country who have not submitted the questionnaire response or have not cooperated in the investigation have been treated as non-cooperative in the investigation.
- q. Interested parties were provided 15 days’ time from the date of circulation of non-confidential version of the application, to file their comments on the scope of PUC and PCN methodology, which ended on 24th October, 2023. None of the interested parties provided any comments or proposals to the Authority for the scope of PUC or proposed PCN methodology within the prescribed timelines.
- r. Accordingly, the Authority finalized the scope of PUC and PCN methodology in the subject investigation vide notice no. 6/23/2023-DGTR dated 30th October, 2023. Authority granted 30 days’ time to interested parties from 30th October, 2023 to file questionnaire responses. Upon the request of certain interested parties, the Authority granted further extension of two weeks to file the questionnaire responses i.e., till 13th December, 2023.
- s. The DG System and the Directorate General of Commercial Intelligence & Statistics (DGCI&S) were requested to provide transaction-wise details of the imports of the subject goods for the injury period and the period of investigation. The same was received by the Authority and considered at the stage of initiation of the investigation as well as for the present final findings.
- t. The period of investigation (“POI”) for the purpose of the present investigation is 1st April 2022 to 31st March 2023. The injury period for the present investigation is 1st April 2019 – 31st March 2020, 1st April 2020 – 31st March 2021, 1st April 2021 – 31st March 2022 and the POI.

- u. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity to the interested parties for presenting their views orally regarding the subject investigation through a public hearing held on 21st May, 2024. The interested parties who presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The interested parties were further directed to share the non-confidential version of the written submissions with the other interested parties.
- v. The non-injurious price (hereinafter also referred to as the “NIP”) has been determined based on the cost of production and reasonable profits of the goods in India, based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules so as to ascertain whether anti-dumping duties lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- w. 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.
- x. 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.
- y. The Authority made available the non-confidential version of the evidence presented by various interested parties on mutual basis in the manner prescribed through Trade Notice no. 01/2020 dated 10th April 2020. The information/submissions provided by the interested parties on a confidential basis were examined concerning the sufficiency of such confidentiality claims.
- z. The Authority has considered all the arguments raised and information provided by all the interested parties in the present final findings, to the extent the same are supported with evidence and considered relevant to the present investigation.
- aa. In accordance with Rule 16 of Rules Supra, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 23rd July, 2024 and comments received thereon, considered relevant by the Authority, have been addressed in this final findings notification.

bb. ‘***’ in this document represents information furnished by an interested party on confidential basis and so considered by the Authority under Rule 7 of the Rules.

cc. The exchange rate for the POI adopted by the Authority for the subject investigation is 1 US \$= Rs. 81.06.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. The product under consideration as defined at the stage of initiation is as follows-

*“3. The product under consideration is **“Thermoplastic Polyurethane” (“TPU”)** originating in or exported from China PR. TPU is a melt-processable thermoplastic elastomer having unique properties of plastic and rubber, including elasticity, transparency, and resistance to oil, grease, and abrasion. TPU is thermoplastic elastomer consisting of linear segmented block copolymer composed of hard and soft segments. PUC covers TPU in the form of powder, granules, pellets, unmodified or modified by colourants, fillers or other additives.*

4. TPU is a unique type of plastic that bridges the gap between rubber and plastic. TPU combines a multitude of strengths characterizing rubber on one hand and thermoplastic materials on the other. TPU can, for instance, be deformed under tensile and compressive load, but afterwards return to their original shape. Furthermore, it can be stretched when heated, and when heated even, they can be melted and moulded over and over again. The key to TPU's versatility is that its hardness can be highly customized. TPU can be as soft as rubber or as hard as rigid plastic. TPU can be transparent or coloured or hard or soft/smooth to provide grip.

5. TPU is obtained from the reaction of polyols (polyester or polyether or polycaprolactone based or a combination of these), diisocyanates and short-chain diols. Additives can be added to these to achieve special properties. By combining all the elements, a wide range of hardness and mechanical properties can be achieved. PUC is offered by the applicant in different grades. However, these different grades are different merely in terms of properties, which can be achieved through control on process parameters and use of specific additives. All these grades remain the same as one article.

6. The product scope covers polyester-based TPU as well as polyether-based TPU, and polycaprolactone-based TPU is specifically excluded from the scope of product.

7. The product under consideration is used in a wide variety of applications including automotive instrument panels, agriculture (animal ID tags), caster wheels, power tools, sporting goods, medical devices, tubes & hoses, belts and profiles industry, footwear, inflatable rafts, variety of extruded film, sheet and profile applications, outer cases of mobile electronic devices, keyboard protectors for laptops etc. TPU is also substituting rubber and PVC (Poly Vinyl Chloride) in premium motorcycle market as well as passenger car interiors.

8. The product under investigation is being imported under Custom Tariff Heading 39095000 of the First Schedule to the Customs Tariff Act, 1975. However, it is possible that the subject goods may also be imported under other headings and therefore, the Customs tariff heading is indicative only and is not binding on scope of the product.”

C.1.Submissions made by the other interested parties

5. The other interested parties have made following submissions with respect to product under consideration:
 - a. The specifications of the PUC exported from China PR to India are transforming from low value-added products to high value-added products. The complexity of product design and the demand for customization has increased. Some technically advanced products cannot be produced by the domestic industry. As a result, the domestic industry is not able to meet such demand of downstream customers.
 - b. Subject goods produced by the domestic industry does not meet the stringent demand of customers who are exporters of footwear and source their footwear soles from Enkay.
 - c. Calsea and Gemini have sourced TPU grades from the domestic industry, however, the same does not meet demand of its clients in other countries. Zhejiang Huaфон TPU Co. Ltd, China is duly approved by its clients in other countries for quality specifications and price agreements. It is further submitted that this approval from customers, which are reputed brands, is given after due audit of the material from suppliers.
 - d. Excel’s customer also did an extensive audit of its supplier Zhejiang Huaфон TPU Co. Ltd, China , and it was the only company to pass the stringent test requirement of its customer.
 - e. International brands advocate for the use of Global Recyclable Standard Grades (“**GRS**

grades”) to promote environmental sustainability. The domestic industry does not produce these grades. These grades are manufactured by only a select few manufacturers globally and China PR being the biggest in this category. The current supplier Zhejiang Huaifon TPU Co. Ltd, China PR has already obtained GRS certificate to manufacture GRS grades and its customers in other countries have also approved their quality specifications.

- f. The domestic industry is also dependent on major imports of its raw materials from China PR for making TPU. The domestic industry has only limited grades manufactured in their Indian facility which is an old technology. The domestic industry’s products/grades are technically incompetent in mobile phone cover application.
- g. The PU Leather Cloth Manufacturers Association has claimed that its members use Polyurethane Resin (“PU Resin”) as an input product in their manufacturing process. PU Resin and TPU fall under the same custom tariff heading i.e., 39095000. The association anticipates that there may be confusion between both the products at the customs at the time of import if anti-dumping duty is recommended on TPU by the Authority and imposed by Ministry of Finance. Thus, the association has requested that PU resin may be expressly excluded from the scope of PUC.

C.2.Submissions made by the domestic industry

6. The following submissions have been made by the domestic industry with regard to the product under consideration:
 - a. None of the interested parties has made any submissions/comments on the PUC or proposed PCNs within the time limit prescribed by the Authority.
 - b. Calsea, Gemini, Enkay and RMCMA have not registered themselves as interested parties and have not filed importer/user questionnaire response. Thus, their written submissions on the scope of PUC should not be considered by the Authority.
 - c. Trade Notice No. 11/2018 provides for streamlining of investigation process with regard to registration of interested parties and weightage to be given to submissions made by parties during the course of the investigation. Thus, if an entity does not register as an interested party and fails to file a questionnaire response within the given timeline, the Authority will disregard that entity's submissions. Additionally, if an

interested party registers but does not file the questionnaire response, their submissions will be given less weightage.

- d. In *Forech India Ltd. Versus the Designated Authority & Others*, the Hon'ble Delhi High Court observed that substantive and procedural requirements laid down by the Authority in its own trade notices are required to be followed in all cases and flexibility cannot be granted by the Authority in this regard.
- e. The Authority should not consider Calsea, Gemini, Enkay and RMCMA as interested parties in the subject investigation. Consequently, submissions made by Calsea, Gemini, Enkay and RMCMA are required to be rejected for this reason itself.
- f. Excel Polymer Industries , Royal Marketing and Essentex Company have registered themselves as interested parties but they have not filed the importer/user questionnaire response.
- g. In *Merino Panel Products Ltd. Versus Designated Authority, Directorate General of Anti-Dumping And Allied Duties*, Hon'ble Customs, Excise, Service Tax and Appellate Tribunal (“CESTAT”) observed that if the importer does not file questionnaire response then it cannot establish itself as an importer in the anti-dumping investigation.
- h. Excel Polymer Industries , Royal Marketing and Essentex Company should be treated as non-cooperating importers/users and granted lesser weightage to the submissions made by them in accordance with Trade Notice No.11/2018.
- i. Calsea and Excel Polymer Industries have not provided any information regarding their imports to show that GRS grade has been imported by them. Thus, it cannot not be verified whether their claim regarding import of GRS grade is correct or not and also whether there is any demand of GRS grade in the domestic market.
- j. In anti-dumping investigation concerning *Coated/Plated Tin Mill Flat Rolled Steel Products originating in or exported from the European Union, Japan, USA and Korea RP*, final findings dated 17th June 2020, the Authority observed that when it cannot be verified whether there is any demand of the product sought to be excluded, exclusion of product types cannot be granted.
- k. Calsea and Excel Polymer Industries have not provided any technical specifications of GRS grade and have made a generic and presumptuous submission that the domestic

industry is not producing GRS grade. The basis for claiming exclusion based on generic description of GRS grade is to create opportunity for circumvention of anti-dumping duty in the future by declaring the imports of TPU as GRS grade.

- l. GRS is a voluntary product standard for tracking and verifying the content of recycled materials in a final product. The standard applies to the full supply chain and addresses traceability, environmental principles, social requirements, chemical content and labelling. GRS covers processing, manufacturing, packaging, labelling, trading and distribution of all products made with a minimum of 20% recycled material. It also sets requirements for third-party certification of recycled content, chain of custody, social and environmental practices, and chemical restrictions. The standard supports companies looking to verify the recycled content of their products as well as responsible social, environmental, and chemical practices in the production of these products. The desired effect of GRS is to provide brands with a tool for more accurate labelling, to encourage innovation in the use of reclaimed materials, to establish more transparency in the supply chain, and to provide better information to consumers. The goal of GRS is to increase use of recycled materials in products and reduce or eliminate the harm caused by its production. Thus, GRS grade is not a mandatory requirement and is not a distinct product grade having different technical specification. It is effectively a certification of minimum amount of recycled content/raw materials in the finished goods.
- m. Calsea and Excel Polymer Industries have not provided any evidence to show that order was placed on the domestic industry for supply of the GRS grade and the domestic industry refused to supply such grade to Calsea and Excel. The domestic industry has not received any orders specifying the requirement of GRS grade of the subject goods till date.
- n. It is the consistent practice of the Authority to examine whether any users/customers have placed an order for a specific grade of the PUC with the domestic industry, and the domestic industry has not been able to supply that specific grade or shown its inability to fulfil such orders.
- o. If an exclusion is granted for GRS grade simply without providing any technical specifications of such grade, it will result in circumvention of anti-dumping duty. Customs Authority cannot verify at the time of import whether the imported TPU is GRS grade if no technical specifications are prescribed by the Authority.

- p. In anti-dumping investigation concerning *Coated/Plated Tin Mill Flat Rolled Steel Products originating in or exported from the European Union, Japan, USA and Korea RP*, Final Findings dated 17th June 2020, the Authority rejected the request for exclusion of certain specialized grades and/or non-prime product when it was determined that there are no clear physical attributes or technical distinctions that differentiate such product types.
- q. The subject goods produced and sold by the domestic industry and the imported GRS grade from the China PR are functionally substitutable and replaceable in the market, due to similar end use. In *Merino Panel Products Ltd. Versus Designated Authority, Directorate General of Anti-dumping and Allied Duties*, CESTAT observed that exclusion of certain types/grades of the product from the investigation is permissible where the imported product is not in commercial competition with the indigenous product and its import, therefore, would not cause any injury to the domestic industry.
- r. In *DSM Idemitsu Limited v. Designated Authority*, CESTAT observed that the appellant did not produce any evidence/ technical literature to substantiate that the product manufactured by the domestic manufacturers was different from the goods exported into India except stating that they were of different grades. CESTAT rejected the contentions of the appellant.
- s. In *Kajaria Ceramics Ltd. Versus Designated Authority*, the CESTAT observed the irrelevance of different grades, when it is known that the grades imported into India are at dumped prices and can replace the grade supplied by the domestic industry.
- t. Further, the Hon'ble CESTAT in *DSM Idemitsu Limited vs Designated Authority* also upheld the fact that difference in quality does not imply that the imported product and the domestic product are not like articles.
- u. Calsea and Excel Polymer Industries have submitted regarding the GRS grades for the first time in their post-hearing written submissions. Calsea and Excel Polymer Industries have not provided any evidence of their imports of GRS grades of the subject goods from Zhejiang Huafon TPU Co Ltd in China PR.
- v. Calsea was regularly procuring the subject goods from the domestic industry till 2019. However, Calsea shifted its sourcing to imports from China PR. Calsea never raised any objections on the quality, or the grades of the subject goods supplied by the

domestic industry to Calsea. The reason for change in supplier is lower dumped price of the subject goods from China PR.

- w. With regard to the claim that the TPU grade produced by the domestic industry is not suitable for production of the mobile covers, the claim is factually incorrect. No information is provided regarding particular grade or details of technical specifications of TPU etc. that are required for production of the mobile covers, and which cannot be supplied by the domestic industry. TPU produced and supplied by the domestic industry is fully suitable for production of mobile covers. In fact, TPU supplied by the domestic industry is having better cycle time, processing, and transparency but due to lower price, customers have shifted to exporters from China PR. The TPU supplied by the domestic industry is regularly used for making mobile covers. Details of key customers and volume of TPU supplied for making mobile covers has been furnished to the Authority by the domestic industry.
- x. With regard to quality of the PUC supplied by the domestic industry, submissions by other interested parties are generic and unsubstantiated allegations. None of the importers/users have reported that TPU supplied by the domestic industry was tested and not approved by their R&D departments or customer inspection teams. Importers/users of TPU for mobile covers or shoe soles have not provided any test reports to show that product supplied by domestic industry is inappropriate. The failure or refusal to test the domestic product does not indicate that it is of inappropriate quality.
- y. The domestic industry is a part of a multi-national corporation having manufacturing plants of TPU in countries outside India as well. It is not possible for any multi-national corporation to set up manufacturing facility in different countries if its products are not competitive in quality by global standards. Moreover, the domestic industry has exported the TPU produced in India to other countries as well. None of their customers either in India or outside India have raised any issue regarding quality of TPU supplied by the domestic industry.
- z. Gemini has sourced the subject goods from one of the dealers of the domestic industry and Gemini did not communicate that the quality or grade supplied by the domestic industry was not suitable for their requirement. Mere statement by Gemini that quality of the domestic industry does not meet their standard without any evidence should not be considered by the Authority.

- aa. It is a settled principle that quality is not the criterion for seeking exclusion of product grades from the scope of the PUC. It has been the consistent practice of the Authority to not grant any exclusion of product grade based on claim regarding inferior quality of product supplied by the domestic industry.
- bb. In the following cases, issue regarding inferior quality of the subject goods supplied by the domestic industry was not considered as relevant justification for condoning dumping of product into India and/or for granting exclusion of product type from the scope of the PUC:
- i. Anti-dumping investigation concerning imports of *Newsprint in rolls or sheets, excluding glazed newsprint* originating in or exported from Australia, Canada, European Union, Hong Kong, Russia, Singapore and United Arab Emirates – final findings dated 19th January 2021
 - ii. Anti-dumping investigation concerning imports of *Electrogalvanized Steel* from Korea RP, Japan and Singapore – final findings dated 27th July 2022
 - iii. Anti-dumping investigation concerning imports of *Viscose Rayon Filament Yarn* originating in or exported from China PR – final findings dated 29th September 2023
- cc. Regarding the claim that the domestic industry imports raw material from China PR for TPU production, the domestic industry has already disclosed these imports to the Authority. The Rules do not require that a domestic industry seeking anti-dumping duties on a product it manufactures in India must refrain from importing raw materials from China PR for that product.
- dd. In many previous investigations conducted by the Authority, the domestic industry in India requesting imposition of anti-dumping duty on imports from China PR was also an importer of raw material from China PR. Some illustrative examples of such investigations are as follows:
- i. Anti-dumping investigation concerning imports of *New/unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres) having nominal rim dia code above 16" used in buses and lorries/trucks", originating in or exported from China PR* – final findings dated 1st October 2017 - Carbon black, which is the raw material for production of tyres, is imported

from China PR by the domestic industry.

- ii. Anti-dumping investigation concerning imports of *Fluoro Backsheet* originating in or exported from China PR. – final findings dated 29th March 2022 – raw material polyvinylidene fluoride used in production of Fluoro Backsheet is imported from China PR
- iii. Anti-dumping investigation concerning imports of *Solar Cells whether or not assembled partially or fully in Modules or Panels or on glass or some other suitable substrates* from China PR – final findings dated 22nd May 2014 – raw materials such as silicon wafer, fluoro backsheet, EVA sheets etc. for production of solar cells and modules are imported from China PR
- iv. Anti-dumping duty investigation concerning imports of *Aluminium Foil* originating in or exported from China PR – final findings dated 10th March 2017 – Foil Stock used for production of Aluminium Foil was imported from China PR by domestic industry.
- v. Anti-dumping investigation on *Hot-Rolled flat products of alloy or non-alloy steel* originating in or exported from China PR, Japan, Korea RP, Russia, Brazil and Indonesia – final findings dated 10 April 2017 – Met coke required for production of Hot-Rolled flat products of alloy or non-alloy steel was imported by domestic producers from China PR, Japan, Indonesia etc.

C.3.Examination by the Authority

7. The Authority notes that none of the submissions regarding scope of the PUC were raised by interested parties within the timeline of 15 days granted by the Authority from the date of circulation of non-confidential version of the application by domestic industry. Accordingly, the Authority confirmed the aforementioned scope of PUC vide notice having no. 6/23/2023-DGTR dated 30th October 2023.
8. The Authority has however addressed the arguments regarding the scope of the PUC and has examined the same based on the relevant information available on record.
9. The Authority also notes that none of the alleged importers/users or association has substantiated their claim regarding lack of quality of goods produced by the domestic industry with evidence. Moreover, none of the alleged importers/users or association who has raised issue

regarding scope of the PUC has filed importers/users questionnaire response to evidence the imports of the subject goods made by them and their status as importers/users of the subject goods. In absence of any importer or user questionnaire response from individual entities, the Authority is unable to verify whether they are actually importer/user of the subject goods and interested parties in the subject investigation. The Authority notes that in accordance with Trade Notice 11 of 2018, lesser weightage should be granted to the submissions made by importers/users who have not filed questionnaire response.

10. With regard to the submission made by Rajkot Mobile Cover Manufacturer Association on behalf of their members who are alleged importers and users of the subject goods, the Authority notes that none of their members are clearly identified and the members have also not filed importer or user questionnaire response. Thus, the Authority is also unable to verify the status of Rajkot Mobile Cover Manufacturer Association as an association of importers/users of subject goods and as an interested party.
11. The Authority also notes that the information provided by the domestic industry shows that users in India have been procuring the subject goods from the applicant. The applicant has submitted that there has been no instance of rejection of the subject goods supplied by the applicant to the users for quality issues.
12. With regard to the submissions concerning 'GRS grade' of the PUC, the Authority notes as follows:
 - i. Importers and users who have claimed that they import the subject goods with GRS certification have not filed the importer/user questionnaire response or provided evidence to show that GRS is a different product grade having different technical and physical characteristics.
 - ii. Importers and users who have claimed that they import subject goods with GRS certification have not provided technical specifications of such product sought to be excluded. In the absence of technical specifications, it is not possible to consider their claim regarding exclusion of the same.
 - iii. In absence of questionnaire response from importers and users, the Authority is unable to verify that the subject goods with GRS certification have been imported by them. Thus, it cannot also be verified whether their claim regarding use of the subject goods with GRS certification is correct or not and also whether there is any demand of the subject goods with GRS certification in the domestic market.

- iv. The Authority is also unable to verify the claim that products produced by them using imported subject goods with GRS certification have been exported by them.
- v. Exclusion of a particular product type from the scope of the PUC can be considered only if it is established that the product type sought to be excluded is technically different, is meant for specific end use and is not substitutable with grades produced by the domestic industry.
- vi. It is also pertinent to note that the product types not manufactured by the domestic industry such as polycaprolactone based TPU have been excluded from the scope of PUC by the domestic industry themselves. The domestic industry has claimed that all other types of TPU are produced by them.
- vii. Therefore, the Authority concludes that there is no requirement to exclude 'GRS grade' from the scope of the PUC.

13. With regard to the claim that the subject goods produced by the domestic industry is not suitable for mobile covers, the Authority notes as follows:

- i. The importers and users who have claimed that the subject goods produced by the domestic industry is not suitable for production of the mobile covers, have not filed the importer/user questionnaire response. Therefore, the Authority cannot examine the details of the subject goods imported by them and the correctness of their claim.
- ii. The importers and users have also not provided any information to substantiate their claim that TPU grade produced by the domestic industry is not suitable for production of mobile covers.
- iii. The domestic industry has also provided information to show that TPU produced by them has been used for the production of the mobile covers and have been used by mobile cover manufacturers. No information is provided regarding particular grade or details of technical specifications of TPU etc. that are required for the production of mobile covers, and which cannot be supplied by the domestic industry.

- iv. It is also pertinent to note that the product types not manufactured by the domestic industry such as polycaprolactone based TPU have been excluded from the scope of PUC by the domestic industry itself. The domestic industry has claimed that all other types of TPU are produced by them.
 - v. Therefore, the Authority concludes that there is no requirement to exclude the subject goods for use in mobile cover from the scope of the PUC.
14. With regard to the request to expressly exclude 'PU Resin' because the subject goods and PU resin are imported under the same HS code 39095000, the Authority notes that the anti-dumping duty is levied on the basis of the description of the PUC and the HS codes are only indicative. In the present case, the PUC is Thermoplastic Polyurethane(TPU). PU resin is not part of the description of PUC and hence there is no need to expressly exclude PU resin from the scope of the PUC.
15. Rule 2(d) of the Rules provides the definition of like article as under:

"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;

16. After considering the information on record, the Authority concludes that the product produced by the domestic industry is like article to the product under consideration imported from the subject country within the scope and meaning of Rule 2(d) of the Rules and it is comparable in terms of physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially, substitutable.
17. Further, the Authority concludes that the PUC is same as noted in the initiation notification and as determined vide notice dated 30th October, 2023 and the same is reproduced as below:

*"3. The product under consideration is **“Thermoplastic Polyurethane” (“TPU”)** originating in or exported from China PR. TPU is a melt-processable thermoplastic elastomer having unique properties of plastic and rubber, including elasticity, transparency, and resistance to oil, grease, and abrasion. TPU is thermoplastic elastomer consisting of linear segmented block copolymer composed of hard and soft*

segments. PUC covers TPU in the form of powder, granules, pellets, unmodified or modified by colourants, fillers or other additives.

4. TPU is a unique type of plastic that bridges the gap between rubber and plastic. TPU combines a multitude of strengths characterizing rubber on one hand and thermoplastic materials on the other. TPU can, for instance, be deformed under tensile and compressive load, but afterwards return to their original shape. Furthermore, it can be stretched when heated, and when heated even, they can be melted and moulded over and over again. The key to TPU's versatility is that its hardness can be highly customized. TPU can be as soft as rubber or as hard as rigid plastic. TPU can be transparent or coloured or hard or soft/smooth to provide grip.

5. TPU is obtained from the reaction of polyols (polyester or polyether or polycaprolactone based or a combination of these), diisocyanates and short-chain diols. Additives can be added to these to achieve special properties. By combining all the elements, a wide range of hardness and mechanical properties can be achieved. PUC is offered by the applicant in different grades. However, these different grades are different merely in terms of properties, which can be achieved through control on process parameters and use of specific additives. All these grades remain the same as one article.

6. The product scope covers polyester-based TPU as well as polyether-based TPU, and polycaprolactone-based TPU is specifically excluded from the scope of product.

7. The product under consideration is used in a wide variety of applications including automotive instrument panels, agriculture (animal ID tags), caster wheels, power tools, sporting goods, medical devices, tubes & hoses, belts and profiles industry, footwear, inflatable rafts, variety of extruded film, sheet and profile applications, outer cases of mobile electronic devices, keyboard protectors for laptops etc. TPU is also substituting rubber and PVC (Poly Vinyl Chloride) in premium motorcycle market as well as passenger car interiors.

8. The product under investigation is being imported under Custom Tariff Heading 39095000 of the First Schedule to the Customs Tariff Act, 1975. However, it is possible that the subject goods may also be imported under other headings and therefore, the Customs tariff heading is indicative only and is not binding on scope of the product.”

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.1.Submissions made by the other interested parties

18. The other interested parties have made the following submissions with respect to the domestic industry and standing:
- a. Rule 2(b) of the Rules provides that producers who are importers or related to exporters/importers shall be excluded from the definition of the domestic industry.
 - b. The domestic industry is a related company of Covestro (Hong Kong) Ltd., and that the domestic industry has not disclosed the name of the related company in its petition.
 - c. As per information available with Zhejiang Huaфон TPU Co. Ltd, the domestic industry has imported *** MT of TPU constituting ***% of the total imports during the POI. The domestic industry has continued importing the subject goods even post-POI.
 - d. As per para 4.9.20 (v) of the Manual of Operating Practices for Trade Remedy Investigations, a specific reference is to be made by the Authority in the initiation notification on the issue of imports of the subject goods by the domestic industry.

D.2.Submissions made by the domestic industry

19. The following submissions have been made by the domestic industry with regard to the domestic industry and standing:
- a. Covestro (India) Pvt. Ltd. is the sole producer of the subject goods in India during the injury period and constitutes 100% of the production of the subject goods in India.
 - b. The domestic industry has imported small quantities of the subject goods from its related companies in China PR and other non-subject countries. The domestic industry has imported certain specific grades of the PUC from China PR for testing purposes and to meet some urgent demand. Imports of the subject goods from China PR by the domestic industry during the POI is in the range of 0-0.15% in relation to (i) imports from China PR or (ii) imports from all countries or (iii) Indian demand.
 - c. The Authority can decide if a domestic producer related to a foreign producer/exporter or importer of dumped goods, or who imports the goods themselves, qualifies as an

eligible domestic producer under Rule 2(b). This determination is not automatic and is made on a case-by-case basis, considering all relevant legal and economic factors.

- d. The facts and circumstances considered by the Authority while exercising its discretion have been noted in many investigations conducted by the Authority in the past. The Authority has consistently observed that mere relationship of the domestic producer with the producer/exporter in the subject country will not exclude such producer from the definition of the domestic industry.
- e. In anti-dumping investigation concerning imports of *Soda Ash originating in or exported from China PR, EU, Kenya, Iran, Pakistan, Ukraine and US, final findings dated 17th February 2012*, the Authority observed that mere fact of relationship of a domestic producer with an importer or exporter or import by such a producer is insufficient to exclude such a producer from the scope of the domestic industry. The Authority is required to apply its mind so as to make objective determination of whether a domestic producer in such a situation should be considered as eligible or ineligible to be considered as a domestic industry. The Authority also held that the current AD Rules continue to grant such discretion to the Designated Authority to decide on the merits of the case to include or exclude such a domestic producer within/from the scope of “domestic industry”.
- f. In anti-dumping investigation concerning imports of *Soda Ash originating in or exported from China PR, EU, Kenya, Iran, Pakistan, Ukraine and USA*, Nirma Ltd. and Saukem also had a related producer/exporter in USA, namely Searles Valley Minerals. The Authority observed in this anti-dumping investigation that exports by related foreign producer/exporter of domestic producers Nirma Ltd. and Saukem were not significant in comparison to total imports into India. The related foreign producer/exporter was not the major exporter of the concerned product. The focus of domestic producers Nirma Ltd. and Saukem was primarily on domestic production and not on trading of goods imported from its related foreign producer/exporter. Thus, Nirma Ltd. and Saukem were held to constitute eligible domestic industry under the Rules.
- g. The Authority had enunciated the same principles in its final findings dated 17th May 2010 in anti-dumping investigation concerning imports of *Viscose Staple Fibre excluding Bamboo Fibre originating in or exported from China PR and Indonesia*. In this case, the domestic industry i.e. Grasim Industries Ltd. had related companies in Indonesia and China PR, namely, Birla Jingwai Fibres Company Limited, China PR

and PT Indo Bharat Rayon, Indonesia, who were producing & exporting the subject goods to India. The Authority observed that exports by related companies from China PR and Indonesia to India were small and sporadic and significant dumping to India was practiced by other producers/exporters from China PR and Indonesia. Moreover, focus of Grasim Industries Ltd. continued on production and did not shift to trading of goods imported from its related companies. Thus, Grasim Industries Ltd. was held to be an eligible domestic industry.

- h. In anti-dumping investigation concerning imports of *Circular Weaving Machines having six or more shuttles for weaving PP/HDPE Fabrics of a width exceeding 30 cms.*, originating in or exported from China PR, the Authority also observed that mere fact of relationship between domestic producer and producer/exporter in the subject country is insufficient to consider the domestic producer as ineligible domestic industry.
- i. In the case of *State of Gujarat Fertilizers and Chemicals Limited v. Government of India*, (2012) 286 ELT 348, the High Court examined the question of exclusion of an importer of the dumped article from the definition of the domestic industry under Rule 2(b). The Court observed that nearly 15% of total production of the company was imported by it and that too casually and to meet customer's demand during the time when the production was disrupted. This quantity was found from the facts to be very insignificant portion of the total import from the same exporting country. Thus, the concerned domestic producer was considered as eligible domestic industry and was not excluded from the definition of the domestic industry under Rule 2(b).
- j. In anti-dumping investigation concerning imports of *Soda Ash originating in or exported from China PR, EU, Kenya, Iran, Pakistan, Ukraine and US*, the Authority noted that it is neither the intent of the WTO Agreement nor of the AD Rules that a straight jacketed formula should be adopted while defining 'domestic industry' where an iota of import of subject goods from the subject country by a domestic producer be treated as sacrilege and thereby ineligible for the status of 'domestic industry'. The conduct of trade and business at times necessitates importation of goods by the domestic industries for either research purposes or to supplement their own production to meet emergent demand in the market or for any other justified reasons.
- k. When volume of exports by related foreign producer/exporter and/or imports by the domestic industry is small for *bona fide* reasons and essential business of the domestic producer as a producer of subject goods is not in doubt, the domestic producer cannot

be excluded from the definition of the domestic industry on the ground that the domestic producer is related to the foreign producer/exporter and/or is an importer of concerned product in terms of Rule 2(b).

- l. In the present case, the domestic industry has imported small quantities of the subject goods from its related companies in China PR and other non-subject countries. The domestic industry has imported certain specific grades of the PUC from China PR for testing purposes and to meet some urgent demand. The imports of the subject goods from China PR by the domestic industry during the POI is *** MT, which is in the range of 0-0.15% in relation to (i) imports from China PR (ii) imports from all countries and (iii) Indian demand. Thus, the imports by the domestic industry are insignificant. The domestic industry has also disclosed that its related company has not supplied to any other entity in India.
- m. Zhejiang Huafon TPU Co. Ltd claimed that the domestic industry imported *** MT of the subject goods but did not provide supporting details or import data to substantiate its claim. It is unclear how Zhejiang Huafon TPU Co. Ltd obtained this confidential exporter or importer-specific data. The domestic industry submits that Zhejiang Huafon TPU Co. Ltd.'s claim is factually incorrect and requests that the Authority may verify the claim using official import data from DG System.
- n. The domestic industry has disclosed information about imports from its related entities in both the subject country and non-subject countries, including Covestro (Hong Kong) Ltd.
- o. The domestic industry has submitted that none of the key managerial personnel of Covestro (India) Pvt Ltd hold any managerial position in the related party in China PR exporting the subject goods to India. Further, key managerial personnel of related producer/exporter in China PR also do not hold any managerial position in the applicant company.

D.3.Examination by the Authority

20. Rule 2 (b) of the Rules defines the "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”.

21. The application in the present case has been filed by Covestro (India) Pvt. Ltd. and the applicant has claimed that they are the sole producer of the subject goods in India. None of the interested parties have claimed existence of any other domestic producers in India. Thus, the Authority concludes that the applicant is the sole producer of the subject goods in India during the injury period and constitutes 100% of the production of subject goods in India.
22. It is noted that the applicant has one related producer of the subject goods in the subject country and is not related to any importer of the PUC in India. The Authority also notes that the applicant has imported the subject goods from its related producer in the subject country during the POI as admitted in the application. In this regard, the Authority has also noted in its initiation notification as below:

“13. The application has been filed by Covestro (India) Pvt Ltd. The applicant has claimed that it is the sole producer of the subject goods in India constituting 100% of the Indian production and therefore, has the requisite standing to file the present application.

*14. As per the information submitted by the applicant, it has imported the subject goods from related producer/exporter in China PR. **Considering the volume of such imports is not significant, the Authority notes, after due examination, that the applicant constitutes eligible domestic industry in terms of the provisions of Rule 2(b) and the application satisfies the criteria in terms of Rule 5(3) of the Rules.**”*

23. The Authority notes that the mere fact of relationship of a domestic producer with a foreign producer/exporter or importer or import by such domestic producer does not automatically lead to exclusion of such domestic producer from the scope of the domestic industry. Under Rule 2(b), the use of the word ‘may’ clearly indicate that the Authority has discretion to decide whether the domestic producer, who is related to the producers/exporters in the subject country or importer in India or has itself imported the subject goods, is eligible to be considered as domestic industry or not. The Authority is required to exercise its discretion after considering all the facts and circumstances so as to make objective determination of whether the concerned domestic producer should be considered as eligible or ineligible domestic industry under Rule 2(b).

24. The Authority considered the arguments of some of the interested parties regarding the relationship of the applicant with producer/exporter in China PR and Hong Kong and imports made by the applicant from its related entities in China PR and Hong Kong.
25. The examination of imports shows that the applicant has imported *** MT of the subject goods from Covestro (Hong Kong) Limited which is related trader in Hongkong exporting the TPU produced by its related producer/exporter in China PR during the POI, which accounts for 0-0.1% of the total demand and 0-0.1% of the total imports into India. Thus, the imports of the subject goods by the applicant are not significant so as to disentitle the applicant from being treated as domestic industry.
26. The claim submitted by Zhejiang Huaфон TPU Co. Ltd does not have the description of the product imported and hence does not substantiate the claim of import of the PUC by the domestic industry. Further analysis of DG System data shows that the domestic industry has imported raw material and other non- PUC from related entities in China PR and Hong Kong.
27. The Authority notes following facts and circumstances regarding relationship of the applicant with producers/exporters in China PR and imports by the applicant from its related entities in China PR:
 - a. None of the opposing interested parties have advanced any justification for exclusion of Covestro (India) Pvt. Ltd. from the scope of the domestic industry, barring the fact of imports and relationship with foreign producer/exporter itself.
 - b. Related entities of Covestro (India) Pvt Ltd. in China PR have only exported small quantities of the PUC to India to Covestro (India) Pvt Ltd. and not to any other entity in India.
 - c. Exports by the related entities of Covestro (India) Pvt Ltd. during the POI are insignificant when compared with total imports into India from China PR. As per the DG System data, exports by related entities in China PR of Covestro (India) Pvt Ltd. during the POI are mainly non-PUC and raw materials.
 - d. The volume of exports by related entities in China PR to India during the POI is not significant so as to cause injury to the domestic industry in India.
 - e. Covestro (India) Pvt Ltd. continues to focus on production of the subject goods in India. Relationship of Covestro (India) Pvt Ltd. with producers/exporters in China PR has not affected its behaviour and business as domestic producer of PUC in India.
 - f. The key managerial personnel of Covestro (India) Pvt Ltd do not hold any managerial position in the related party in China PR exporting the subject goods to India and key managerial personnel of related producer/exporter in China PR also do not hold any managerial position in the applicant company.

28. Therefore, considering the information on record, the Authority holds the applicant/petitioner- Covestro (India) Pvt. Ltd. as eligible domestic industry within the meaning of Rule 2(b) of the Rules, and that the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1. Submissions made by the other interested parties

29. The other interested parties have not made any submissions with regard to the confidentiality.

E.2. Submissions made by the domestic industry

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

- a. BASF Polyurethane Specialties China Co., Ltd (BAPS):
 - i. Company has not disclosed the information regarding owner/principal shareholder list and their affiliations.
 - ii. Company has not disclosed its marketing/distribution channel details for domestic and export sales to India. (Exhibit B-3)
 - iii. Company has not disclosed the details of adjustments claimed for determining normal value and export price.
 - iv. Company has not disclosed manufacturing process in Exhibit G-1.
 - v. Company has not disclosed raw material names.

- b. BASF Hong Kong Ltd (BHKL):
 - vi. Company has not disclosed the information regarding owner/principal shareholder list and their affiliations.
 - vii. Company has not disclosed its marketing/distribution channel details for domestic and export sales to India.

- c. BASF Integrated Site (Guangdong) Co. Ltd (BISL):
 - viii. Company has not disclosed the information regarding owner/principal shareholder list and their affiliations.
 - ix. Company has not disclosed manufacturing process in Exhibit G-1
 - x. Company has not disclosed raw material names.

- d. BASF International Trading (Shanghai) Co., Ltd (BITC):
 - xi. Company has not disclosed the information regarding owner/principal shareholder list and their affiliations.
- e. BASF India Limited (BIL):
 - xii. Claiming Appendix 13 as confidential without proper indexing.
- f. Zhejiang Huafon TPU Co., Ltd. (Huafon):
 - xiii. Company has not disclosed the information regarding owner/principal shareholder list and their affiliations (Exhibit A-2).
 - xiv. Company has not disclosed manufacturing process in Exhibit G-1
 - xv. Company has not disclosed raw material names in Appendix-6.

31. The Authority should treat BASF Group and Zhejiang Huafon TPU Co., Ltd as a non-cooperative party due to the excessive confidentiality claims and incomplete information provided in their questionnaire responses.

E.3. Examination by the Authority

32. The Authority made available the non-confidential version of the information provided by various interested parties to all interested parties for inspection through e-mail communication between various parties.

33. With regard to confidentiality of information, Rule 7 of the Rules, 1995 provides as follows:

“(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 authorisation 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 authorise its disclosure in a generalised or summary form, it may disregard such information.”

34. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. The Authority notes that the information provided by the interested parties on confidential basis was duly examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. MISCELLANEOUS

F.1. Submissions made by the other interested parties

35. The other interested parties have made the following submissions with respect to the miscellaneous issues:
- a. Government of India is in the process of implementing mandatory standard certification requirement on “polyurethanes” vide notification dated 6th March 2024. The same will be effective from 19th September 2024. This will create a non-tariff barrier and consequently affect imports of TPU into India.
 - b. That IS 17397 (Part 1): 2020/ISO 16365-1:2014 is applicable to the subject goods whereby requiring all producers of the subject goods to mandatorily obtain certification as per conformity assessment schemes under the provisions of the Bureau of Indian Standards Act, 2016. This, in effect, will increase the prices of the subject goods, thereby creating a demand-supply gap as it will affect the free flow of trade between the countries.

F.2. Submissions made by the domestic industry

36. The following submissions have been made by the domestic industry with respect to the miscellaneous issues:

- a. Quality control order and anti-dumping duty are two different instruments with different objectives. If a product complies with the quality control order and is imported into India at dumped prices, anti-dumping duty can be recommended on such product. If a product is not in compliance with the quality control order, then such product cannot be imported into India even if such product is to be exported to India at un-dumped prices.
- b. The Authority in *its* final findings dated April 2017 in anti-dumping investigation concerning imports of *Cold-Rolled flat products of alloy or non-alloy steel originating in or exported from China PR, Japan, Korea RP and Ukraine* had observed that even if a quality control order exists, it does not lead to a conclusion that no dumping or injury can be caused to the domestic industry.
- c. The quality control order on the PUC has not come into force till date. After the quality control order was issued on 13th September 2021, it was scheduled to be implemented on 12 March 2022. However, the time for implementation has been extended several times as and when the scheduled implementation date is approaching.

Order No.	Date of notification	Prescribed date of entry into force
S.O. 3931(E) Principal Order	13 th September 2021	It shall come into force on the expiry of one hundred and eighty days i.e., 12 th March 2022
S.O. 1277(E)	23 rd March 2022	It shall come into force on 19 th September 2022
S.O. 4141(E)	2 nd September 2022	It shall come into force on 19 th March 2023
S.O. 1238(E)	15 th March 2023	It shall come into force on 19 th March 2024
S.O. 1112(E)	6 th March 2024	It shall come into force on 19 th September 2024

- d. As per the recent notification on 6th March 2024, the time limit for implementation of quality control order has been once again extended till 19th September 2024. Thus, the time limit for implementation of quality control order has been repeatedly extended and it cannot be assumed that quality control order will be implemented on 19th September

2024.

- e. In any case, existence of quality control order is inconsequential and legally irrelevant consideration for the Authority in the present investigation while deciding whether the anti-dumping duty should be recommended by the Authority on the imports of the PUC into India.

F.3. Examination by the Authority

37. The Authority notes that quality control order and the Rules are two different instruments for different purposes. The purpose of quality control order is to ensure that product imported into India is of prescribed standard and specification. The Rules are framed to ensure that product imported into India is at un-dumped prices and is not causing injury to the domestic industry. Even if quality control order comes into force on the import of the PUC, it will not in any way curtail the right of the domestic industry to get protection in the form of anti-dumping duty on dumped imports into India.

G. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

G.1. Normal Value

38. Under Section 9A(1)(c) of the Act, 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.2. Submissions made by the other interested parties

39. The following submissions have been made by other interested parties with regard to normal value:

- a. China's Accession Protocol has expired on 11th December 2016. Zhejiang Huaфон TPU Co. Ltd, China has relied on relationship between Article 15(a) and 15(b) of the protocol in the Appellate Body report on the "Fastener case" initiated by China PR against the EU, which has provided strong justification for China PR to automatically obtain the market-economy status once the Article 15 of the Protocol expires.
- b. After 11th December 2016, anti-dumping regulations cannot contain any provisions allowing for the establishment of the normal value for the Chinese exporting producers on a basis other than their domestic prices and costs.
- c. India has no legal basis under the WTO Agreement to calculate normal value in anti-dumping investigation for products from China PR using the non-market economy methodology. Any such action by India would be inconsistent with the requirements of the Agreement on Implementation of Article VI of the GATT.
- d. The Authority may not use surrogate country methodology in calculating normal value, regardless of whether China PR is treated as a market economy due to the principle of *pacta sunt servanda*, Section 15 of China's Accession Protocol to WTO and Appellate Body Report on EC- Fasteners initiated by China PR.
- e. China PR should not be treated as a non-market economy as per China's accession protocol to WTO, the same was also confirmed by the WTO Appellate Body in "EC-Fasteners". US and EU in their respective bilateral agreement with China PR had also

noted about the expiry of non-market economy status after 15 years after China enters WTO.

G.3. Submissions made by the domestic industry

40. The following submissions have been made by the domestic industry with regard to normal value:
 - a. China PR should be treated as a non-market economy country and normal value in case of the producers/exporters from China PR should be determined in accordance with para-7 read with para 8 (2) and (3) of Annexure I of the Rules. In terms of Para 8 in Annexure I to the Rules, it is presumed that the producers of the subject goods in China PR are operating under non-market economy conditions. Therefore, normal value of the subject goods in China PR has been estimated in terms of Para 7 of Annexure I to the Rules.
 - b. Article 15 (d) of the Protocol, the provision of 15(a)(ii) has expired in December 2016 i.e., 15 years after China PR's accession to the WTO. However, Article 15(a)(i), which provides for presumption of non-market economy for China PR, is still in force. Hence, a valid presumption exists that China PR is a non-market economy country for anti-dumping investigations.
 - c. The Authority may note that none of the responding exporters have claimed market economy treatment by filing applicable questionnaire replies and, in this context, determination of normal value based on paras 7 and 8 of Annexure-I to the Rules is very essential.

G.4. Examination by the Authority

41. The Authority had sent questionnaire to the known producers/exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. Following producers/exporters have co-operated in the investigation by filing the prescribed questionnaire responses:
 - i. BASF Polyurethane Specialties China Co., Ltd.
 - ii. BASF International Trading (Shanghai) Co., Ltd.
 - iii. BASF Hong Kong Limited
 - iv. BASF Integrated Site (Guangdong) Co. Ltd.
 - v. Zhejiang Huafon TPU Co., Ltd.

G.4.1 Normal value and export price for China PR

Market economy status for Chinese producers

42. Article 15 of China's Accession Protocol in WTO provides as follows:

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

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

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

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

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

43. It is noted that while the provision contained in Article 15(a)(ii) have expired on 11.12.2016, the provision under Article 2.2.1.1 of the WTO Agreement on Anti-Dumping read with the obligation under Article 15(a)(i) of the Accession Protocol require the criterion stipulated in Para 8 of Annexure I to the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire upon claiming market economy status.
44. Accordingly, the normal value for all the producers/exporters from China PR has been determined as below.

a) Determination of normal value for China PR

45. As none of the producers from China PR have filed the supplementary questionnaire response for market economy treatment, the normal value has been determined in accordance with para 7 of Annexure I of the Rules. Para 7 of Annexure I of the Rules provides as follows:

“7. 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.

8. (1) The term "non-market economy country" means any country which the designated authority determines is not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in subparagraph (3).

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an antidumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country. Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in subparagraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether: (a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values; (b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts; (c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and (d) the exchange rate conversions are carried out at the market rate. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph.

(4) Notwithstanding, anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph (3), has been, by publication of such evaluation in a public document,

treated or determined to be treated as a market economy country for the purposes of anti-dumping investigations, by a country which is a Member of the World Trade Organization.”

46. Para 7 lays down hierarchy for determination of normal value and provides that normal value shall be determined on the basis of price or constructed value in a market economy third country, or the price from such a third country to any other country, including India, or where it is not possible, on any reasonable basis, including the price actually paid or payable in India for the like article, duly adjusted, if necessary, to include a reasonable profit margin. Thus, the Authority notes that the normal value is required to be determined having regard to the various sequential alternatives provided under para 7 of Annexure-I.
47. The Authority notes that none of the interested parties have provided any information with regard to domestic price, constructed value or export price of the product in an appropriate market economy third country. The Authority notes that it is required to select an appropriate country on the basis of information and evidence brought on record by the interested parties. Since neither the applicant nor the other interested parties have provided any verifiable information, the normal value could not be determined on this basis.
48. In the absence of sufficient information on record regarding the other methods enshrined in Para 7 of Annexure I of the Rules, the Authority has determined the normal value by considering the method on “any other reasonable basis”.
49. The Authority has therefore constructed the normal value for China PR on the basis of cost of production in India, duly adjusted, including selling, general and administrative expenses and reasonable profits. The constructed normal value so determined for Chinese producers/exporters is mentioned in the dumping margin table below.

G.5. Export Price

G.6. Submissions made by the other interested parties

50. The following submissions have been made by other interested parties with regard to determination of export price:
 - a. If the Authority decides to recommend imposition of anti-dumping duty on the import of subject goods, the Authority should determine individual rate of anti-dumping duty for the cooperating producers/exporters.

G.7. Submissions made by the domestic industry

51. The following submissions have made by the domestic industry with regard to determination of export price:
- a. BASF Polyurethane Specialties China Co., Ltd (BAPS) has provided incomplete information on company affiliations and related activities.
 - b. BAPS has not provided purchase prices from independent parties for raw materials/utilities.
 - c. BASF Integrated Site (Guangdong) Co. Ltd. (BISL) has provided incomplete information on affiliations and related activities.
 - d. BASF Hong Kong Ltd (BHKL) has provided incomplete information on company affiliations and related activities.
 - e. BHKL being a trader failed to provide Appendix-5 of questionnaire response.
 - f. BHKL has omitted the details of adjustments claimed for determining normal value and export price.
 - g. BASF International Trading (Shanghai) Co., Ltd,(BITC) has not furnished the information regarding owner/principal shareholder list and their affiliations.
 - h. BASF International Trading (Shanghai) Co., Ltd. has provided incomplete information on company affiliations and related activities.
 - i. BASF International Trading (Shanghai) Co., Ltd. being a trader failed to provide Appendix-5 of questionnaire response.
 - j. BASF India Ltd. (BIL) has provided incomplete disclosure of distribution channels for sales in India.
 - k. BIL has not complied with Trade Notice 06/2021 formats.
 - l. BIL has failed to disclose the impact of duties on costs and prices of the downstream product.
 - m. Zhejiang Huaфон TPU Co Ltd has provided incomplete information on company affiliations, including:
 - Details of parent companies, subsidiaries, and related companies with contact information.
 - Activities of each related company.
 - Details of related companies involved in PUC or supplying raw materials/utilities.
 - n. Zhejiang Huaфон TPU Co Ltd has provided contradictory information regarding the number of plants involved in the production of PUC. Huaфон claimed one plant in Question 1 of Section G, but Appendix-7 indicates existence of two plants.
 - o. Zhejiang Huaфон TPU Co Ltd stated that all materials are purchased but Appendix-7 suggests the use of captive inputs.

- p. Zhejiang Huafon TPU Co Ltd has not provided purchase prices from independent parties for raw materials/utilities and there is lack of evidence to justify transfer prices.

G.8. Examination by the Authority

52. Following producers and exporters from China PR have participated and filed questionnaire response. The Authority has undertaken the desk verification and examined the claims made by the producers/exporters and the domestic industry. The Authority notes that majority of the submissions made by the domestic industry are pertaining to non-disclosure of related party affiliations in the non-confidential version and relating to cost of production of Chinese producers/exporters. The Authority has examined these claims and notes the non-confidential version submitted the Chinese producers/exporters is in line with the trade notice issued by the Authority. The responses by participating producers/exporters have been examined further in detail as under:

i. Miracll Chemicals Co. Ltd.

53. From the response filed by Miracll Chemicals Co. Ltd (“Miracll”), the Authority notes that Miracll has exported the subject goods to India during the POI directly to unrelated Indian customers. It is noted that Miracll has exported the *** MT of subject goods to India. Miracll has claimed adjustments of ocean freight, insurance, inland transportation, port and other related expenses, and credit cost and the same has been considered by the Authority. The ex-factory export price for Miracll as determined is given in the dumping margin table below.

ii. BASF Group- BASF Polyurethane Specialties China Co., Ltd. (producer/exporter), BASF Integrated Site (Guangdong) Co. Ltd. (related producer), BASF Hong Kong Ltd. (related exporter) and BASF India Ltd. (related importer)

54. BASF Polyurethane Specialties China Co., Ltd. (BAPS) has exported *** MT of subject goods during the POI to its related exporter BASF Hong Kong Ltd. (BHKL), who has exported the same to its related Indian customer BASF India Ltd. (BIL). The related Indian customer sold the same to unrelated Indian customers. All the three companies engaged in the exports to India sales channel i.e., BAPS, BHKL and BIL filed the complete questionnaire response and cooperated with the investigation. The ex-factory export price determined has been given in the dumping margin table.
55. It has been noted that BASF Integrated Site (Guangdong) Co. Ltd. (BISL), which is a related producer of BAPS has started production of subject goods after the end of POI.

iii. **Zhejiang Huafon TPU Co., Ltd.**

56. From the response filed by Zhejiang Huafon TPU Co., Ltd (“Huafon”), Authority notes that Huafon has exported the subject goods to India during the POI directly to unrelated Indian customers. It is noted that Huafon has exported *** MT of subject goods to India. Huafon has claimed adjustments of ocean freight, insurance, inland freight, credit cost and bank charges and the same has been considered by the Authority. The ex-factory export price for Huafon as determined is given in the dumping margin table below.

Export Price for non-cooperating producers/exporters

57. For all other producers/ exporters from China PR, export price has been determined based on facts available taking into account the data examined for the co-operating exporters and the same is mentioned in the dumping margin table below.

Dumping Margin

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

Dumping margin table

Producer's/ exporter's name	Normal value (Rs/Kg)	Net export price (Rs/Kg)	Dumping margin (Rs/Kg)	Dumping margin (%)	Dumping margin (% range)
Miracll Chemicals Co. Ltd	***	***	***	***	40-50%
BASF Polyurethane Specialties China Co., Ltd	***	***	***	***	Negative
Zhejiang Huafon TPU Co., Ltd.	***	***	***	***	50-60%

Producer's/ exporter's name	Normal value (Rs/Kg)	Net export price (Rs/Kg)	Dumping margin (Rs/Kg)	Dumping margin (%)	Dumping margin (%) range)
All others	***	***	***	***	80-90%

The Authority notes that significant dumping margin exist for all the exporters/producers from China PR except BASF Polyurethane Specialties China Co., Ltd.

H. EXAMINATION OF INJURY AND CAUSAL LINK

H.1. Submissions made by the other interested parties

59. The other interested parties have made the following submissions with regard to injury:

- a. The import data filed by the domestic industry is incorrect, therefore, examination of volume effect and price effect may not provide a true picture.
- b. The imports from China PR have not caused any injury to the domestic industry during the injury investigation period. The imports from China PR have moved in tandem with the increase in demand.
- c. The capacity of the domestic industry is ***MT whereas the demand of TPU in India is approx. 20,000 MT. The domestic industry being the sole producer of the subject goods in India can meet only 25-30% of the Indian demand. Imports have come only to fill the demand and supply gap of the subject goods in India and not to cause injury to the domestic industry.
- d. Price undercutting is 35-45% which means the domestic industry is selling the goods at a price about 35-45% higher than the landed value. Similarly, injury margin is 40-50% which shows that non-injurious price (“NIP”) and net sales realization (“NSR”) is almost similar. Thus, the domestic industry is already selling its goods at a non-injurious price.
- e. During the year 2020-21, when the price undercutting was highest as 45-55%, profitability of domestic industry was highest which shows no correlation between higher levels of price undercutting and profitability.

- f. The capacity of the domestic industry remained unchanged throughout the injury period and the period of investigation. Production and capacity utilization of the domestic industry have decreased by 7% respectively.
- g. The domestic sales of the domestic industry have declined during the POI from 100 to 85 as compared to the base year 2019-20, whereas export sales have increased tremendously by 229% during the POI as compared to the base year 2019-20 which shows that the domestic industry is focusing on exports rather than domestic sales by choice and not by chance.
- h. The trend of inventory is showing decline which clearly depicts that the domestic industry was able to sell whatever it was producing.
- i. PBDIT and cash profits have increased during the POI by 10% and 9% respectively. Due to outbreak of COVID 19 pandemic, Chinese producers were inoperative or partially operative and therefore, could not supply the goods at the commercial quantities as would have supplied in the normal circumstance. This affected the level of competition in the industry. Therefore, this situation may not be considered by the Authority while examining the injury.
- j. The number of employees has slightly increased from 100 during the base year 2019-20 to 101 during the period of investigation. However, salaries and wages have declined from 100 during the base year 2019-20 to 61 during the period of investigation. The domestic industry has manipulated the data to deliberately fabricate the injury.
- k. There is 7% decline in both productivity per day and production quantity from 2019-20 to the period of investigation (POI), despite a slight 1% increase in the number of employees and individual productivity per employee. This indicates that overall output has decreased, potentially due to operational inefficiencies or other challenges, rather than employee performance. Additionally, the decline in salaries and wages during this period of inflation is concerning and suggests potential issues with wage policies or financial constraints within the organization.
- l. The domestic industry faced a 7% decline in both production quantity and capacity utilization, despite stable employee productivity and a slight increase in employee numbers. Inventory levels declined showing effective demand management. However, the dramatic 39% drop in salaries and wages during an inflationary period suggests

possible data manipulation. Overall, the reported financial injury may not accurately reflect the true economic conditions and performance of the domestic industry.

Director General should adopt ROCE earned by the industry when there was no allegation of dumping as reasonable profit margin and not 22% ROCE.

- m. The Authority must make an appropriate assessment of the injury caused to the domestic industry by the other known factors, and they must separate and distinguish the injurious effects of the dumped imports from the injurious effects of those other factors. Such reasons include internal problems, depressed market conditions globally, fluctuations in the price of raw materials, impact of the pandemic COVID-19, Russia Ukraine War, shutdown of the plant etc.
- n. The domestic industry has suffered injury on account of its high depreciation and finance cost.

H.2. Submissions made by the domestic industry

60. The domestic industry has made the following submissions with regard to injury:

- a. The domestic industry has filed the petition with the import data available with it as per market intelligence. The Authority has already considered the transaction wise import data from DGCI&S at the time of initiation of the subject investigation.
- b. The Authority may consider the import data from DGCI&S and DG System for volume and price effect. The requisite information has already been filed with the Authority demonstrating the volume and price effect due to the dumping of the subject goods from China PR.
- c. Demand-supply gap is not relevant for determining the need for imposition of anti-dumping duty. In *DSM Idemitsu Limited vs. Designated Authority*, CESTAT rejected the contention of the appellant that anti-dumping duty should not be recommended because the domestic industry was the only domestic industry manufacturing EPDM and it could not meet the requirements of the domestic market. The appellant also contended that the imports were only filling the demand supply gap. The CESTAT with regard to demand-supply gap observed that if the exporters wanted to supply the goods to meet the requirement in Indian market, the same could be done by exporting

the requirements at a price equivalent to normal value but not at a dumped value and to capture the market.

- d. The Authority has consistently held that demand supply gap is not a justification for dumping, and even if there is a demand supply gap, it is necessary that the subject goods are available at fair prices.
- e. The Authority in following final findings has also observed that demand-supply gap cannot be a valid justification for dumped imports:
 - i. Anti-dumping investigation concerning imports of *Phenol originating in or exported from European Union, South Africa and Singapore* – final findings dated 13th February 2003
 - ii. Anti-dumping investigation concerning imports of *Aceto Acetyl Derivatives of aromatic or heterocyclic compounds also known as Arylides from China PR* - final findings dated 19th August 2021
 - iii. Anti-dumping investigations on the imports of *Self-Adhesive Vinyl (SAV) originating in or exported from China PR* – final findings dated 28th December 2023
 - iv. Anti-dumping investigation concerning imports of *Natural Mica based Pearl Industrial Pigments excluding cosmetic grade originating in or exported from China PR* – final findings dated 8th June 2021
 - v. Sunset Review Investigation concerning imports of *Styrene Butadiene Rubber originating in or exported from European Union, Korea RP and Thailand* – final findings dated 29th July 2022
- f. There is no legal mandate for comparison of NIP with NSR under the Rules. In this regard, the Authority in its final findings dated 17th February 2012 in anti-dumping investigation concerning import of *Soda Ash originating in or exported from China PR, European Union, Kenya, Iran, Pakistan, Ukraine and USA*, had observed that there is no legal provision that the Authority should compare the non-injurious price with net sales realization in order to determine the price effect.
- g. CESTAT in its order dated 6th September 2016 in *All India Glass Manufacturers Federation v. Designated Authority*, observed that there is no legal provision to mandate the Authority for comparing NIP with NSR in order to determine the price effect.

- h. Even if NSR is higher than NIP, it is not relevant to conclude that the domestic industry is not suffering adverse price impact or material injury.
- i. Information provided by the domestic industry in the petition and in the written submission filed pursuant to the oral hearing clearly shows that it is suffering from material injury. The Authority has noted *prima facie* injury being caused to the domestic industry in the initiation notification.
- j. Grant of 22% return on capital employed is the consistent practice of the Authority. This issue has been settled by various judgments of the CESTAT. CESTAT in *Merino Panel Products Ltd. v. Designated Authority*, Final Order No. AD/A/53541/2015-CU[DB] dated 27th November 2015 had permitted the 22% rate of return on capital employed as standard practice. CESTAT had reaffirmed the same principle in *Eximcorp India Pvt. Ltd. v. Designated Authority*, final order No. AD/A/53462/2016-CU[DB] dated 12th September 2016.
- k. Huaafon has not indicated any specific reasons which may have contributed to the injury to the domestic industry except dumped imports from China PR. It is not sufficient to merely list out generic possibilities and geo-political events for doubting the existence of causal link between imports and injury to the domestic industry.

H.3. Examination by the Authority

61. Rule 11 of the Rules read with Annexure II provides that an injury determination shall involve an examination of factors that may indicate injury to the domestic industry, “.... *taking into account all the 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 the 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.
62. 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 to the Rules.

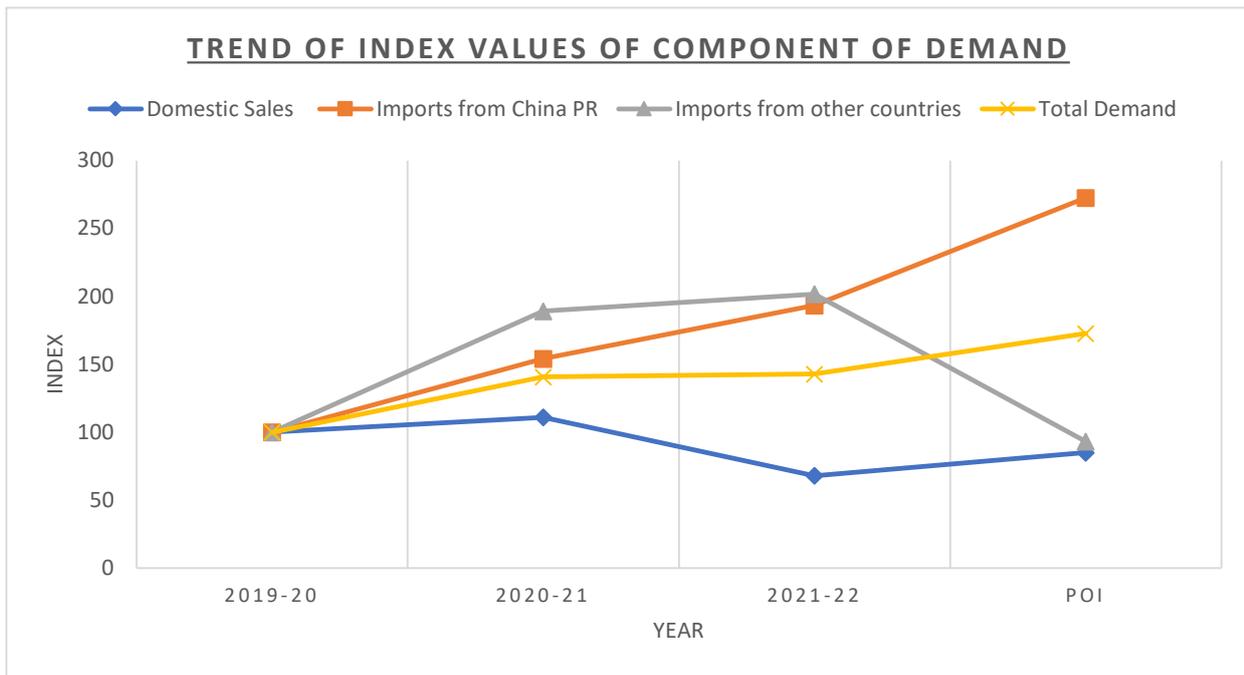
63. The Authority has taken note of the various submissions made by the domestic industry and the other interested parties on injury. The submissions made by interested parties with regard to injury and causal link, which have been considered relevant by the Authority are examined and addressed as under.
64. The Authority notes that it is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration, while some others may not. The Authority considers all injury parameters and, thereafter, determines whether the domestic industry has suffered injury or is likely to suffer injury due to dumping. The Authority has examined the injury parameters objectively considering the facts and arguments submitted by the domestic industry and other interested parties.

H.3.1. Volume effect of the dumped imports

a) Assessment of demand

65. The Authority has determined the demand or the apparent consumption of the product in India, as the sum of domestic sales of the domestic industry and imports from all sources. The demand so assessed is given in the table below-

Particulars	Unit	2019-20	2020-21	2021-22	POI
Sales of domestic industry	MT	***	***	***	***
Trend	Indexed	100	111	68	85
Imports from China PR	MT	5,056	7,795	9,773	13,780
Trend	Indexed	100	154	193	273
Imports from other countries	MT	1,356	2,566	2,738	1,265
Trend	Indexed	100	189	202	93
Total Demand	MT	***	***	***	***
Total Demand	Indexed	100	141	143	173



66. Following points have been observed by the Authority from the above table :

- The demand during the injury investigation period has increased consistently. Demand of the subject goods has increased by 73 % in the POI as compared to 2019-20.
- The imports from the subject country has increased by 173 % and that from non-subject countries has decreased by 7%
- The domestic sales of the domestic industry have decreased by 15%.
- Imports from the subject country have captured the increase in demand.

b) Import volume and share of the subject country

67. The effect of the volume of dumped imports from the subject country as well as imports from other countries have been examined by the Authority as follows:

SN	Particulars	UOM	2019-20	2020-21	2021-22	2022-23
1.	Imports from China PR	MT	5,056	7,795	9,773	13,780
		Indexed	100	154	193	273
2.	Total imports	MT	6,412	10,361	12,511	15,045
		Indexed	100	162	195	235
3.	Indian production	MT	***	***	***	***
		Indexed	100	102	89	93
4.	Demand	MT	***	***	***	***

SN	Particulars	UOM	2019-20	2020-21	2021-22	2022-23
		Indexed	100	141	143	173
5.	Subject country imports in relation to					
a.	Total imports	%	***	***	***	***
		Indexed	100	95	99	116
b.	Indian Production	%	***	***	***	***
		Indexed	100	151	218	292
c.	Demand	%	***	***	***	***
		Indexed	100	110	135	158

68. The Authority notes as follows:

- a) Imports from the subject country in absolute terms have increased from 5,056 MT in 2019-20 to 13,780 MT in the POI. In indexed terms, imports from the subject country have increased by 173 % in the POI when compared to 2019-20.
- b) Indian production has remained stable and has slightly decreased in the POI whereas the Indian demand has increased by 73% in the POI as compared with 2019-20.
- c) Imports from the subject country in relation to total imports have increased by 16% in the POI when compared to 2019-20.
- d) Imports from the subject country in relation to Indian production have increased by 192 % in the POI when compared to 2019-20.
- e) Imports from the subject country in relation to demand have increased by 58% in the POI when compared to 2019-20.

H.3.2. Price effect of the dumped imports

69. With regard to the effect of the dumped imports on prices, it is required to be analysed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in normal course.
70. Accordingly, the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject country has been examined with reference to price undercutting and price suppression/depression, if any. For the purpose of this analysis the cost

of sales and the net sales realization (NSR) of the domestic industry have been compared with the landed price of the subject imports from the subject country.

a) Price undercutting

71. In order to determine, whether the imports are undercutting the prices of the domestic industry in the market, price undercutting has been worked out by comparing the landed price of the subject imports with the selling price of the domestic industry during the injury period.

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
Landed Price	Rs/Kg	189	181	279	262
	Index	100	96	147	138
Net Sales Realisation	Rs/Kg	***	***	***	***
	Index	100	116	150	151
Price Undercutting	Rs/Kg	***	***	***	***
	Index	100	202	163	207
Price Undercutting	%	***	***	***	***
	Range	20-30%	45-55%	35-45%	45-55%

72. It is seen that the landed price from the subject country has been below the selling price of the domestic industry, thus undercutting the domestic prices.

b) Price suppression / depression

73. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to depress domestic prices to a significant degree or prevent increases in domestic prices which otherwise would have occurred to a significant degree, the Authority notes the changes in the costs and prices over the injury period.

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
Cost of Sales	Rs/Kg	***	***	***	***
	Index	100	108	148	154
Net Sales Realisation	Rs/Kg	***	***	***	***
	Index	100	116	150	151
Landed Price	Rs/Kg	189	181	279	262
	Index	100	96	147	138

74. The Authority notes that the landed price of imports from the subject country during the injury investigation period is well below the cost of sales and selling price of the domestic industry. This is creating significant price depression/suppression effect on the domestic industry.
75. The cost of sales increased from 100 index point in 2019-20 to 154 index point in the POI and the net sales realisation also increased from 100 index in 2019-20 to 151 index points in the POI, whereas the landed price has increased by 38 index points in POI when compared to 2019-20. This shows that the import prices from China PR are not allowing the domestic industry to fully recover the increase in cost of sales.

H.3.3. Economic parameters pertaining to the domestic industry

76. Annexure - II of the Rules lays down that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on the domestic producers of such products. The Rules further provide for an objective evaluation of all relevant economic parameters 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 margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, various injury parameters relating to the domestic industry are discussed herein below.

a) Capacity, production, capacity utilization and domestic sales

77. The capacity, production, capacity utilization and domestic sales over the injury period are as under:

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
Installed Capacity	MT	***	***	***	***
	Indexed	100	100	100	100
Production (PUC)	MT	***	***	***	***
	Indexed	100	102	89	93
Capacity Utilisation	%	***	***	***	***
	Indexed	100	102	89	93
Domestic Sales	MT	***	***	***	***
	Indexed	100	111	68	85

78. The Authority notes as follows:

- a) Both production and capacity utilisation have reduced from 100 indexed points in 2019-20 to 93 indexed points in POI despite significant increase in demand during the same period.
- b) Domestic sales have reduced from 100 indexed points in 2019-20 to 85 indexed points in POI despite significant increase in demand during the same period.
- c) Capacity utilisation of ***% during the POI is low considering the fact that the demand in India has been growing and the domestic industry has achieved a higher capacity utilisation in 2019-20 and 2020-21. The domestic industry has claimed that it can achieve 100% capacity utilisation except for the presence of dumped imports from China PR.

b) Market Share

79. Information with respect to market share over the injury period is as under:

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
Imports from China PR	MT	5,056	7,795	9,773	13,780
	Indexed	100	154	193	273
Imports from other countries	MT	1,356	2,566	2,738	1,265
	Indexed	100	189	202	93
Sales of domestic industry	MT	***	***	***	***
	Indexed	100	111	68	85
Total demand	MT	***	***	***	***
	Indexed	100	141	143	173
Market share of domestic industry	%	***	***	***	***
	Indexed	100	79	48	49
Market share of imports from China PR	%	***	***	***	***

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
	Indexed	100	110	135	158

80. The Authority notes as follows:

- a) Domestic sales of the domestic industry have reduced from 100 indexed points in 2019-20 to 85 indexed points in POI.
- b) Market share of imports from the subject country has increased from 100 indexed points in 2019-20 to 158 indexed points in POI.
- c) Market share of the domestic industry has drastically reduced from 100 indexed points in 2019-20 to 49 indexed points in the POI.
- d) Demand of the PUC increased by 73% in the POI as compared to 2019-20. However, the market share of the domestic industry decreased by 51% in the POI as compared to 2019-20 and the market share of imports from the subject country increased by 58% in the POI as compared to 2019-20.
- e) Entire increase in demand during the injury investigation period was captured by the imports from China PR.
- f) The import from other countries have decreased by 7% in POI as compared to 2019-20 and this portion has also been captured by the imports from China PR.

c) Profitability, cash profits and return on investments

81. Information with respect to profitability, return on investment and cash profits during the injury period is as under:

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
Profit before tax	Rs/Kg	***	***	***	***
	Indexed	100	248	193	102
	Rs Lacs	***	***	***	***
	Indexed	100	275	132	86

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
Profit before interest & tax	Rs/Kg	***	***	***	***
	Indexed	100	236	180	107
	Rs Lacs	***	***	***	***
	Indexed	100	261	123	90
Cash profit	Rs/Kg	***	***	***	***
	Indexed	100	189	175	135
	Rs Lacs	***	***	***	***
	Indexed	100	210	120	114
Return on capital employed	%	***	***	***	***
	Indexed	100	145	95	79
Average inventory	MT	***	***	***	***
	Indexed	100	70	68	80

82. The Authority notes as follows:

- a) Both profitability and return on capital employed of the domestic industry increased in 2020-21 as the domestic industry got a big order from Government of India and thereafter, it has reduced consistently when compared with 2019-20 as well as when compared with 2020-21.
- b) Profit before tax has reduced by 14% in the POI as compared to 2019-20.
- c) Profit before interest and tax has reduced by 10% in the POI as compared to 2019-20.
- d) Return on capital employed has reduced by 21 % in the POI when compared to 2019-20.

d) Inventory

83. Information with respect to inventory over the injury period is as under:

Particulars	UOM	2019-20	2020-21	2021-22	2022-23
Average Inventory	MT	***	***	***	***
	Indexed	100	70	68	80

84. The Authority notes that inventory of the domestic industry has declined till 2021-22 and has again increased in the POI as compared to the previous year.

e) Productivity, employment and wages

85. Information with respect to productivity, employment and wages over the injury period is as under:

SN	Particulars	UOM	2019-20	2020-21	2021-22	2022-23
1	Productivity per day	MT	***	***	***	***
		Indexed	100	102	89	93
2	Productivity per employee	MT	***	***	***	***
		Indexed	100	101	89	92
3	No of employees	Nos.	***	***	***	***
		Indexed	100	101	100	101

86. The Authority notes that productivity of the domestic industry has reduced over the injury investigation period.

f) Growth

87. Information with respect to year-by-year growth over the injury period is as under:

Particulars	UOM	2020-21	2021-22	POI
Capacity	%	0%	0%	0%
Production	%	2%	-13%	5%
Capacity Utilisation	%	2%	-13%	5%
Domestic Sales	%	11%	-38%	24%
PBT (Per Kg)	%	148%	-22%	-47%
Cash Profit (per Kg)	%	89%	-7%	-23%
ROI	%	45%	-35%	-16%

88. The Authority notes that the domestic industry has witnessed negative growth year by year in terms of profit, cash profit and ROI.

g) Factors affecting domestic prices

89. The examination of the import price from the subject country, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc. shows that the landed value of imported material from the subject country is below the selling price and cost of sales of the domestic industry, thereby causing price undercutting and price depression/suppression. The demand for the subject goods increased over the injury period and therefore it could not have been a factor affecting domestic prices.

h) Ability to raise capital investments

90. The domestic industry has submitted that in view of increasing demand, domestic industry has also made a request/application to the concerned authorities for increase in capacity by *** MT. The approval is under process. However, if the dumping continues at this rampant pace, it may not be viable for the domestic industry to increase its capacity.

i) Magnitude of dumping margin

91. It is seen that the dumping margin is above *de minimis and significant*.

H.4. THREAT OF MATERIAL INJURY

H.4.1. Submissions made by the other interested parties

92. The other interested parties have not made the submissions with regard to threat of injury.

H.4.2. Submissions made by the domestic industry

93. The domestic industry has made the following submissions with regard to threat of injury:

- a. The dumped imports have increased significantly from 5,159 MT in 2019-20 to 13,097 MT in the POI. Furthermore, imports from China PR have increased during the post-POI period as can be seen from the table below:

Imports	Unit	Apr'23-Jun' 23	July'23- Sep'23	Oct' 23-Dec'23
China PR	MT	3,314	2,486	3,988

- b. The domestic industry submits that during the quarter of Oct' 23- Dec' 23, imports from China PR were to the tune of 3,988 MT whereas during 2019-20, imports during the whole year were 5,159 MT. It can be seen that this increase is significant as the

volume of imports earlier in the entire year are now being imported in just a single quarter.

- c. The import price of subject goods from China PR has declined significantly during the post-POI period as shown in the table below:

Imports	Unit	2021-22	POI	Apr'23-Jun' 23	July'23-Sep'23	Oct' 23-Dec'23
China (CIF price)	Rs/Kg	257	243	190	187	161

- d. The import price of the subject goods from China PR has further declined to 190 Rs/Kg during April-June 2023, 187 Rs/Kg during July-September 2023 and 161 Rs/Kg during October-December 2023 as compared to 243 Rs/Kg during the POI. Thus, price undercutting, price underselling, price suppression and depression in the post-POI period has intensified further. This is creating a threat of further aggravated injury to the domestic industry.
- e. As per the market intelligence of the domestic industry, there has been significant capacity addition for TPU production in China PR. This fact can also be corroborated by the questionnaire response filed by some of the participating producers/exporters from China PR.
- f. The capacity of Miracll has increased from 100 indexed points in 2019-20 to 149 indexed points in the POI. Thus, there is a significant capacity addition of 50% by Miracll.
- g. Further, it can be seen that the export sales to India of Miracll have increased significantly from 100 indexed points in 2019-20 to 262 indexed points in the POI. However, their domestic sales have only increased from 100 indexed points in 2019-20 to 116 indexed points in POI. It is clear that the domestic demand in China PR is not increasing at the same pace as the capacity addition done by Miracll and there is a likelihood that the exports to India would further intensify if anti-dumping measures are not put in place.

- h. Similarly, it can be seen that the export sales to India of Huaфон have increased significantly from 100 indexed points in 2019-20 to 226 indexed points in the POI. However, their domestic sales have only increased from 100 indexed points in 2019-20 to 143 indexed points in the POI.
- i. As per the information available in the public domain, it is understood that the capacity of Huaфон is 80,000 MT which is more than 4 times the Indian demand of the subject goods. Thus, it is clear that there is a likelihood that the exports to India would further intensify if anti-dumping measures are not put in place.

H.4.3. Examination by the Authority

94. Para. (vii) of Annexure II of the Rules provides as follows:

(vii) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the designated authority shall consider, inter alia, such factors as:

(a) a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;

(b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;

(c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(d) inventories of the article being investigated.

95. The Authority notes that for assessment of threat of material injury, the Authority can consider factors such as rate of increase of dumped imports into India, disposable capacity in subject country, increase in capacity in the subject country, trend of import prices from the subject country, inventory of PUC with producers/exporters in the subject country. The Authority notes that it can also examine any other factor in addition to the above factors for assessment of threat of material injury to the domestic industry.

a) Significant rate of increase of imports into India indicating the likelihood of substantially increased importation

96. The Authority notes that the imports from China PR have increased significantly from 5,056 MT to 13,780 MT in the POI.

Imports	Unit	2019-20	2020-21	2021-22	POI
China PR	MT	5,056	7,795	9,773	13,780
	Index	100	154	193	273
Demand	MT	***	***	***	***
	Indexed	100	141	143	173

97. The Authority notes that imports from China PR have increased consistently during the injury investigation period. Imports from China PR increased by more than 2.5 times in the POI as compared to 2019-20. Further, the examination of the Authority is restricted to the POI only.

98. The Authority also notes that rate of increase in imports is significantly higher than the rate of increase in demand during the injury investigation period.

b) Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports

99. Capacity of producers/exporters from China PR is higher than the domestic demand in China PR.

100. Capacity, Capacity utilisation and export sales to India of cooperating producers/exporters is as follows:

Particulars	Unit	2020	2021	2022	POI
Miracll Chemicals Co. Ltd					
Capacity	MT	***	***	***	***
	Indexed	100	137	149	149
Capacity Utilisation	%	***	***	***	***

Particulars	Unit	2020	2021	2022	POI
	Indexed	100	100	80	81
Export Sales to India	MT	***	***	***	***
	Indexed	100	178	231	261
Zhejiang Huafon TPU Co., Ltd.					
Capacity	MT	***	***	***	***
	Indexed	100	100	100	100
Capacity Utilisation	%	***	***	***	***
	Indexed	100	148	179	184
Export Sales to India	MT	***	***	***	***
	Indexed	100	70	195	226
BASF					
Capacity	MT	***	***	***	***
	Indexed	100	106	89	88
Capacity Utilisation	%	***	***	***	***
	Indexed	100	124	111	101
Export Sales to India	MT	***	***	***	***
	Indexed	100	209	167	170

101. The Authority notes that capacity of Miracll has increased from 100 indexed points in 2020 to 149 indexed points in the POI.

102. The Authority notes that producers/exporters in China PR have sufficient freely disposable capacity which can be put to use for increasing exports to India.

103. The Authority notes that export sales to India of Huafon have increased significantly from 100 indexed points in 2020 to 226 indexed points in the POI.

104. The Authority also notes that as per available information, total capacity and freely disposable capacity of subject goods of one of the participating producers Huafon in China PR is significantly higher than total Indian demand of subject goods.

105. Examination of capacity, capacity utilisation and export sales of cooperating producers and exporters from China PR shows that producers/exporters from China PR have increased their capacity for production of subject goods and/or have sufficient freely disposable capacity of subject goods and/or have increased their export sales to India during the injury investigation period.

106. Thus, the Authority concludes that there is sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporters indicating the likelihood of substantially increased dumped exports to Indian markets.

c) Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports

107. The Authority notes that the landed price of imports from the subject country during the injury investigation period is well below the cost of sales and selling price of the domestic industry. This is creating significant price depression/suppression effect on the domestic industry.

108. As per the information submitted by the domestic industry, the landed price of imports from subject country has further reduced significantly during the post POI period causing further aggravated price suppression/depression.

H.5. CAUSAL LINK AND NON – ATTRIBUTION ANALYSIS

H.5.1. Submissions made by the other interested parties

109. The other interested parties have made the following submissions with regard to causal link:

- a. There is inefficient utilisation of total capacity by the domestic industry.
- b. Number of other crucial issues had an impact on the domestic industry independently from the imports from China PR. Such reasons include internal problems, depressed market conditions globally, subdued demand for company's product, and impact of the pandemic COVID-19, etc.

H.5.2. Submissions made by the domestic industry

110. The domestic industry has made following submission with regard to causal link:

- a. Imports from the subject country constitute majority of the total imports into India. Barring imports from the subject country, imports from other countries are either in

low volumes and/or at higher prices. Therefore, imports from other countries cannot be a cause of injury to the domestic industry.

- b. Interested parties have not identified any other causes of injury to the domestic industry apart from the dumped imports coming from the subject country.

H.5.3. Non-Attribution Analysis

111. 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 causing injury to 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 countries

112. The Authority notes that the imports of the product under consideration from non-subject countries are not in significant quantity. Also, the prices at which imports of the PUC were made from non-subject countries is significantly higher than prices of the subject country.

Particulars	Unit	2019-20	2020-21	2021-22	POI
Imports price (CIF) China PR	Rs/Kg	175	167	258	242
Imports price (CIF) from other countries	Rs/Kg	263	229	303	453

b) Contraction of demand

113. There has been constant rise in demand of the product concerned throughout the injury period.

c) Export performance and captive consumption

114. The Authority has considered the data for domestic operations only for its injury analysis. The injury information examined hereinabove relates only to the performance of the domestic industry in terms of its domestic market.

d) Development of Technology

115. There has been no change in technology which can cause injury to the domestic industry.

e) Performance of other products of the company

116. The domestic industry has only considered information related to the PUC for the purpose of injury analysis.

f) Trade restrictive practices and competition between the Foreign and Domestic producers

117. There are no trade restrictive practices that can be considered as a reason for the material injury suffered by the domestic industry.

g) Changes in pattern of consumption

118. The pattern of consumption in India has not changed with respect to the PUC.

H.6. MAGNITUDE OF INJURY MARGIN

119. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the information/data relating to the duly verified cost of production provided by the domestic industry for the POI. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the NIP, the best utilisation of the raw materials and utilities has been considered over the injury period. The best utilisation of production capacity over the injury period has been considered. Extraordinary or non-recurring expenses have been excluded from the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e.,

average net fixed assets plus average working capital) for the product under consideration has been allowed as pre-tax profit to arrive at the NIP as prescribed in Annexure III to the Rules.

120. Based on the landed price and the NIP determined as above, the injury margin as determined by the Authority is provided in the table below.

Injury Margin

Producer's/ exporter's name	NIP (Rs/Kg)	Landed value (Rs/Kg)	Injury margin (Rs/Kg)	Injury margin (%)	Injury margin (% Range)
Miracll Chemicals Co. Ltd	***	***	***	***	30-40%
BASF Polyurethane Specialties China Co., Ltd	***	***	***	***	Negative
Zhejiang Huaфон TPU Co., Ltd.	***	***	***	***	40-50%
All others	***	***	***	***	60-70%

I. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

I.1. Submissions made by other interested parties

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

- a. Imposition of anti-dumping duty will increase their costs and a monopolistic situation will be created.
- b. Imposition of high anti-dumping duty as demanded by the applicant domestic industry will block all imports from China PR and the same will shift to other countries like Germany and other European countries.

- c. The capacity of the domestic industry is 6000 MT whereas the demand of TPU in India is approx. 20,000 MT. The domestic industry being the sole producer of the subject goods in India can meet only 25-30% of the Indian demand alone. Imports have come only to fill the demand and supply gap for the subject goods in India and not to cause injury to the domestic industry.

I.2. Submissions made by the domestic industry

122. The domestic industry has made following submissions with regard to public interest issues:

- a. None of the importers/users except BASF India in India have filed importers/users questionnaire response and/or provided any quantifiable impact of anti-dumping duty on them by filing economic interest questionnaire. This itself shows that the anti-dumping duty on PUC has no material bearing on their business.
- b. The domestic industry has provided calculation showing that the impact of imposition of anti-dumping duty on various user industries will be minimal.
- c. Anti-dumping duty will not create monopolistic situation because anti-dumping duty will not prohibit imports into India. Anti-dumping duty will ensure that imports into India are at fair prices and will provide level playing field to the domestic industry.
- d. Demand-supply gap is not relevant for determining the need for imposition of anti-dumping duty. In *DSM Idemitsu Limited vs. Designated Authority*, CESTAT rejected the contention of the appellant that anti-dumping duty should not be recommended because the domestic industry was the only domestic industry manufacturing EPDM and it could not meet the requirements of the domestic market. The appellant also contended that the imports were only filling the demand supply gap. The CESTAT with regard to demand-supply gap observed that if the exporters wanted to supply the goods to meet the requirement in Indian market, the same could be done by exporting the requirements at a price equivalent to normal value but not at a dumped value and to capture the market.
- e. The Authority has consistently held that demand supply gap is not a justification for dumping, and even if there is a demand supply gap, it is necessary that the subject goods are available at fair prices.

I.3. Examination by the Authority

123. The Authority issued a gazette notification inviting views on the subject anti-dumping investigation from all the interested parties, including importers, users and other interested parties. The Authority also prescribed a questionnaire for the importers/users to provide relevant information with regard to the present investigation, 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 consumers to switch sources, effect of anti-dumping duty on the users etc. However, none of the importers/users have filed questionnaire response as requested by the Authority.
124. The Authority notes that the applicant is the sole producer of PUC in India during the injury investigation period. It is in the larger economic interest of the country that the sole domestic producer who has made investment in India for producing PUC continues to remain in operation to meet the demand of Indian users. With regard to the claim that imposition of anti-dumping duty can lead to monopoly of domestic industry, the Authority notes that there is no evidence on record to show that the imposition of anti-dumping duty will lead to creation of a monopoly in India. There have been several investigations where anti-dumping duty has been levied even though there was a single producer in the country and a single supplying country outside India.
125. With regard to the claim that there is demand-supply gap in India and imports are necessary, the Authority notes that existence of demand-supply gap cannot be the justification for dumping of the product into India. The Authority also notes that if there is a demand-supply gap in the country, the foreign producers can certainly fill the gap in the country by bringing the product at a fair price. The purpose of imposition of anti-dumping duty, in general, is to address the issue of trade distortion caused by the unfair trade practices in order to re-establish the situation of open and fair competition. Anti-dumping duty does not restrict imports, but only ensures that the imports enter the market at fair prices. Thus, the users will continue to have the broader choice and liberty to import the subject goods at fair prices, which will ensure better competition in the market.
126. With regard to the issue of demand-supply gap, the Authority also notes that available capacity for the product in India with the applicant has also not been fully utilized during the POI as evident from the 71% capacity utilization by the domestic industry. Even though the present capacity is not sufficient to meet the current Indian demand, it was explained by the domestic industry that it can achieve much higher output from the current capacity itself if there was no dumping of subject goods from China PR. The domestic industry has submitted that in view

of increasing demand, it has also made a request/application to the concerned authorities for increase in capacity by 2000 MT. The approval is under process. However, if the dumping continues at this rampant pace, it may not be viable for the domestic industry to increase its capacity. The Authority also acknowledges the submission that the sole applicant domestic producer cannot be expected to enhance capacity in a situation when its existing capacity is not fully utilized due to dumped imports coming into India from China PR.

127. The Authority notes that due to presence of dumped imports from China PR, the domestic industry is unable to supply to the growing market demand of PUC, which is substantially driven by use of PUC in mobile cover and sole manufacturing for footwear. The domestic industry has also submitted that if dumping is not remedied by imposition of anti-dumping duty, it can even lead to stoppage of production and shut down of existing production capacity. If that happens, producers/exporters from China PR would have the monopoly over the market in India and end users would be dependent only on China PR for supply of PUC. It would increase the dependency on China PR and would be a threat to end user industry.

128. With regard to the adverse impact of anti-dumping duty on user industry of mobile covers and sole manufacturer for footwear, the Authority notes that information provided by the domestic industry shows the impact of anti-dumping duty on import of PUC would be in the range of 0.01-2% on downstream products including mobile covers and footwear. However, none of these importers/users have provided quantification of impact of anti-dumping duty on PUC on their business. Authority is unable to rely on unsubstantiated claim made by interested parties regarding adverse impact of anti-dumping duty.

J. CONCLUSION ON INJURY AND CAUSAL LINK

129. Authority notes that the examination of imports into India and performance of the domestic industry clearly show that there is injury to the domestic industry and there is causal link between dumped imports and injury to the domestic industry:

- a. Imports from the subject country in absolute terms have increased from 5,056 MT in 2019-20 to 13,780 MT in the POI.
- b. Landed price of imports from the subject country during the injury investigation period is well below the cost of sales and selling price of the domestic industry.
- c. Both production and capacity utilisation have reduced from 100 indexed points in 2019-20 to 93 indexed points in POI.
- d. Domestic sales have reduced from 100 indexed points in 2019-20 to 85 indexed points in POI.

- e. Capacity utilisation during the POI is low considering the fact that the demand in India has been growing and the domestic industry has achieved a higher capacity utilisation in 2019-20 and 2020-21.
- f. Demand of the PUC increased by 73% in the POI as compared to 2019-20. However, the market share of the domestic industry decreased by 51% in the POI as compared to 2019-20 and the market share of imports from the subject country increased by 58% in the POI as compared to 2019-20. Imports from the subject country have captured the entire increase in demand.
- g. Profit before tax of domestic industry has reduced by 14% in the POI as compared to 2019-20
- h. Return on capital employed of domestic industry has reduced by 21 % in the POI when compared to 2019-20
- i. Producers/exporters in China PR have sufficient freely disposable capacity which can be put to use for increasing exports to India
- j. Capacity of producers/exporters from China PR is higher than the domestic demand in China PR
- k. Other known factors such as exports, trade restrictive practices, technology, pattern of consumption, decline in demand have not caused injury to the domestic industry.

130. Thus, the Authority notes that the domestic industry is suffering material injury due to increased dumped imports of PUC into India from the subject country. There exists a strong causal relation between the increase in dumped imports of the subject goods originating in or exported from the subject country and the material injury suffered by the domestic industry.

K. POST DISCLOSURE SUBMISSION

K.1. Submissions made by the other interested parties

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

- a. BAPS has submitted that BISL is a related producer of BAPS and had started production of the subject goods after the end of the POI. In view of this, it has submitted that BISL is entitled to the same individual dumping margin, injury margin and consequent duty as of BAPS since if the individual treatment is restricted only to the group entity (BAPS in this case), which has exported the subject goods to India during the period of investigation, then the other group companies (BISL in this case) will neither be able to export their goods at the same rate nor it would be entitled to new shipper review in terms of Rule 22.
- b. Zhejiang Huaфон TPU Co., Ltd. has submitted that Covestro is a global company with manufacturing sites and offices in multiple countries like Germany, etc. , that specializes in

the manufacture of high-performance polymers and materials. It has further submitted that Covestro (India) Pvt. Ltd. is a related company of Covestro (Hong Kong) Ltd. in China. Currently, Covestro India Pvt. Ltd. is importing the subject goods from China. However, following the imposition of anti-dumping duties on imports of thermoplastic polyurethane (TPU) from China, Covestro India Pvt. Ltd. may start importing the subject goods from its main supplier i.e., Covestro in Germany. This strategy may allow Covestro to establish a monopoly in India by undermining other producers in China PR.

- c. Zhejiang Huafon TPU Co. Ltd has further submitted that the product under consideration is being sold in various grades, each with distinct characteristics and market values. Given this diversity, it has requested that the Authority should recommend variable duty structure on imports of thermoplastic polyurethane (TPU).
- d. Miracll Chemicals Co. Ltd. has not submitted any comments on disclosure statement.

K.2. Submissions made by the domestic industry

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

- a. The scope of the product under consideration noted by the Authority in its disclosure statement is correct. The same should be confirmed by the Authority in its final findings.
- b. The observation of the Authority that the applicant is an eligible domestic industry within the meaning of Rule 2(b) of the Rules, and that the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules is correct and should be confirmed in the final findings.
- c. The Authority has correctly determined that imports from China PR are dumped and injurious imports.
- d. The observations of the Authority regarding volume of imports, economic parameters of the domestic industry clearly indicate material injury and threat of further aggravated material injury to the domestic industry due to dumped imports of the PUC from China PR. The observations of the Authority should be confirmed in the final findings as well.
- e. It is clear that there are no other known factors causing injury to the domestic industry. There is clear causal link between dumped imports from China PR and material injury to the domestic industry.

- f. The Authority should recommend imposition of fixed anti-dumping duty on imports of the PUC from China PR for a period of 5 years in its final findings

K.3. Examination by the Authority

- a. With regard to the submission that BASF Integrated Site (Guangdong) Co. Ltd. is entitled to the same individual dumping margin, injury margin and consequent duty as of BASF Polyurethane Specialties China Co., Ltd., the Authority notes that BASF Integrated Site (Guangdong) Co. Ltd. was not the producer of the PUC during the POI. Therefore, no individual dumping margin, injury margin can be determined for BASF Integrated Site (Guangdong) Co. Ltd. and consequently no anti-dumping duty can be prescribed for BASF Integrated Site (Guangdong) Co. Ltd.
- b. With regard to the contention that if anti-dumping duty is imposed on imports from China PR, the domestic industry can start importing the PUC from its parent company in Germany, and can create monopoly in the market, the Authority notes that the imports of the PUC from China PR will be subjected to anti-dumping duty and will not be prohibited. Therefore, it cannot be said that anti-dumping duty will lead to creation of a monopolistic situation. Authority also notes that anti-dumping duty is always country specific. It does not mean that the domestic industry along with imports from other countries will be able to monopolize the market.
- c. With regard to the submission that grade wise variable duty should be prescribed on imports of the PUC, the Authority notes that it has determined the dumping margin and the injury margin for the PUC as a whole. In fact, none of the interested parties requested for adoption of PCN methodology in the present investigation. Thus, the Authority notes that there is no possibility of recommending grade wise variable duty on imports of the PUC.

L. CONCLUSION

133. Based on the submissions made, substantiated information provided by the interested parties and the facts available before the Authority as recorded and examined in the aforementioned paragraphs and on the basis of determination of dumping and consequent injury to the domestic industry, the Authority concludes the following:

- i. The product under consideration in the present investigation is “thermoplastic polyurethane (TPU)” originating in or exported from China PR. TPU is a melt-processable thermoplastic elastomer having unique properties of plastic and rubber, including elasticity, transparency, and resistance to oil, grease, and abrasion. TPU is thermoplastic elastomer consisting of linear segmented block copolymer composed of hard and soft segments. The PUC covers TPU in the form of powder, granules, pellets, unmodified or modified by colourants, fillers or other additives. The product scope covers polyester-based TPU as well as polyether-based TPU. Polycaprolactone-based TPU is specifically excluded from the scope of product under consideration.
- ii. The product under consideration has been exported from the subject country at a price below the normal value, thus, resulting in dumping. The dumping margin found in case of imports of the subject goods originating in or exported from the subject country for all producers/exporters except BASF Polyurethane Specialities China Co. Ltd is not only above *de-minimis* level but also significant.
- iii. The applicant Covestro (India) Pvt. Ltd. is an eligible domestic industry within the meaning of Rule 2(b) of the Rules, and the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.
- iv. The examination of volume of imports of the subject goods shows that the imports of the subject goods from the subject country have increased significantly in the POI in absolute terms and also in relation to production and consumption in India.
- v. While the market share of the domestic industry declined during the POI, the market share of imports from the subject country has increased significantly in the same period.
- vi. The landed price of imports has been below the net sales realization of the domestic industry in the POI and has been, therefore, undercutting the prices of the domestic industry. Further, the landed price of imports has also been below the cost of sales of the domestic industry in the POI.
- vii. Profitability and return on capital employed of the domestic industry have reduced consistently since 2020-21.
- viii. Key economic parameters such as domestic sales, production have declined in the POI. Capacity utilisation of the domestic industry has remained low despite the fact that

demand in India is growing and the domestic industry can achieve 100% capacity utilisation if there are no dumped imports from China PR.

- ix. The domestic industry has suffered injury as a result of dumped imports. The injury margin is positive and significant. There is also threat of further aggravated injury to the domestic industry if anti-dumping duty is not imposed on import of subject goods from China PR.
- x. No other factor appears to have caused injury to the domestic industry. The Authority concludes that the injury to the domestic industry has been caused by the dumped imports of the subject goods from the subject country.
- xi. It is noted with regard to public interest that anti-dumping duty will have negligible impact on the downstream products. Also, anti-dumping duty does not restrict imports, but only ensures that the imports enter the market at fair prices. Users will continue to have the broader choice and liberty to import the subject goods at fair prices, which will ensure better competition in the market.

134. In view of the above, the Authority, finds that there is sufficient evidence that the product under consideration has been exported to India from the subject country at dumped prices and such dumping of the subject product from the subject country has caused material injury to the domestic industry.

M. RECOMMENDATION

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

136. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that imposition of anti-dumping duty is required to offset dumping of the subject goods from subject country and the consequent injury to the domestic industry. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on the imports of the subject goods from the subject country in the form and manner described hereunder for a period of five(5) years.

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

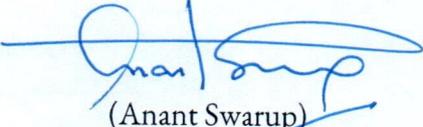
Duty Table

SN	Heading/Sub heading	Description of Goods	Country of Origin	Country of Export	Producer	Amount	UoM	Currency
1	2	3	4	5	6	7	8	9
1.	3909 5000	Thermoplastic Polyurethane (TPU)*	China PR	Any country including China PR	BASF Polyurethane Specialties China Co., Ltd	NIL	Kg	USD
2.	-do-	-do-	China PR	Any country including China PR	Zhejiang Huaфон TPU Co., Ltd	1.15	Kg	USD
3.	-do-	-do-	China PR	Any country including China PR	Miracll Chemicals Co. Ltd.	0.93	Kg	USD
4.	-do-	-do-	China PR	Any Country including China PR	Any producer other than S.No. (1), (2) and (3)	1.58	Kg	USD
5.	-do-	-do-	Any country other than China PR	China PR	Any	1.58	Kg	USD

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

** The product scope covers polyester-based TPU as well as polyether-based TPU, and polycaprolactone-based TPU is specifically excluded from the scope of product.*

138. The landed value of imports for the purpose of this notification shall be assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under Sections 3, 8B, 9, 9A of the said Act.
139. An appeal against the determination of the Designated Authority in these final findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the relevant provisions of the Act.



(Anant Swarup)

Designated Authority