Non-Confidential

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No.14/36/2016-DGAD
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Anti-Dumping & Allied Duties)
4th Floor, Jeevan Tara Building, 5 Parliament Street, New Delhi -110001

Dated 13th December, 2017

Final Findings

Subject: Anti-dumping investigation concerning imports of 'Toluene Di- Isocyanate (TDI)' originating in or exported from China PR, Japan and Korea RP.

No.14/36/2016-DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time [hereinafter also referred to as the Act] and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules,1995, [hereinafter also referred to as the Rules], as amended from time to time, thereof;

A. BACKGROUND OF THE CASE

2. Whereas M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited (hereinafter referred to as "the petitioner" or "the applicant") have filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and Rule *supra* for initiation of anti-dumping investigation and imposition of anti-dumping duty concerning imports of "Toluene Di- Isocyanate" (TDI in short) (hereinafter also referred to as the subject goods or product under consideration), originating in or exported from China PR, Japan and Korea RP (hereinafter also referred to as the subject countries) alleging dumping of subject goods from subject countries and consequent injury to the domestic industry.

3. And whereas the Authority on the basis of prima facie evidence submitted by the applicant, issued a public notice vide Notification No.14/36/2016-DGAD dated 05.10.2016, published in the Gazette of India, Extraordinary, initiating the subject anti-dumping investigation in accordance with the sub Rule 5 of the AD Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

4. The Authority issued Preliminary Findings vide Notification No.14/36/2016- DGAD dated 28.03.2017, read with corrigendum dated 10.4.2017, recommending provisional anti-dumping duty in the present investigation on imports of subject goods from subject countries. Based on such recommendation, Ministry of Finance issued a customs notification imposing provisional anti-dumping duty vide Customs Notification No.

25/2017-Customs (ADD) dated 05.06.2017 accepting the recommendations of the Authority. Provisional duties were imposed for six months from the date of customs notification *supra*.

B. PROCEDURE

5. The procedure described herein below has been followed by the Authority with regard to the subject investigation;

i. Preliminary scrutiny of the application showed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented. The Authority, on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject countries.

ii. The Authority notified the embassy of the subject countries in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of rule 5 *supra*.

iii. In addition to the provisions of sub-rule (5) of Rule 5 supra, the Government of Korea RP was informed through its Embassy in India about the receipt of the subject application as per provisions of Article 2.14 of Comprehensive Economic Partnership Agreement (CEPA) between India and Korea RP

iv. Post initiation, the Authority sent a copy of the initiation notification to the embassies of the subject countries in India, known producers/exporters from the subject countries, known importers/users and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification as per Rule 6(2) of the AD Rules. Necessary extensions to file such submissions wherever warranted have also been permitted by the Authority.

v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassy of the subject country in India in accordance with Rule 6(3) of the Rules supra. A copy of the application was also provided to other interested parties, wherever requested. The embassies of the subject countries in India were also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit.

vi. The Authority sent questionnaires to elicit relevant information to the following known producers/exporters in subject countries in accordance with Rule 6(4) of the AD Rules;

a) Yantai Juli Fine Chemical Co., Ltd,China PR.
b) Changzhou Dahua Group Co., Ltd,China PR.
c) Shanghai BASF Polyurethane Co., Ltd,China PR.
d) Bayer Material Science (China) Co., Ltd,China PR.
e) Mitsui Chemicals & SKC Polyurethanes,Japan.
f) Nippon Polyurethane Industry Co., Ltd,Japan.
g) Hanwha Fine Chemical Co., Ltd.Korea RP
h) OCI Corporation/OCl Company Ltd.Korea RP
i) BASF Company Ltd.Korea RP

vii. In response to the initiation notification and intimation, the following exporters / producers from subject countries have responded to the Authority by filing Exporter Questionnaire Response;

a) Hanwha Chemical Corporation, Korea RP
b) TAJ AL Mulook General Trading LLC, UAE
c) PP and Y International Co. Ltd, Korea RP
d) IMS Corporation, Korea RP
e) Everlite Korea Co., Ltd, Korea RP
f) BASF Company Ltd, Korea RP

viii. Apart from the above companies, following companies from China PR also shown their interest to participate in the investigation though they claimed not to have exported the subject goods to India during the POI;

a) Wanhua Chemical Group Co., Ltd
b) CangzhouDahua Holding Co., Ltd

ix. Following exporters also filed certain submissions following the initiation;

a) Covestro (Hong Kong) Limited
b) Mitsui Chemicals & SKC Polyurethanes INC

x. Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information;

1. Sheela Group Co.,
2. Tirupati Foam
3. Kurlon Ltd.
4. Springwell Mattresses
5. Sunrise Foam Product Pvt Ltd.
6. M H Polymers
7. Pyarelal Foam (South)

8. Jindal Foam
9. Allied Foam
10. DuraPuff
11. Fancy Foam
12. Hindustan Polyfoam
13. Shree Malani Foams
14. Prime Comforts
15. Springfeel Polyurethanes
16. Aadi Polymers

xi. In response, following importers/users have responded by filing Importer Questionnaire responses;

a) Sheela Foam Ltd

xii. Apart from the above parties, M/s Indian Polyurethane Association, claimed to be an association of users of the subject goods in India and M/s Henkel Adhesives Technologies India Pvt Ltd, claimed to be an importer cum user of the subject goods in India sought to participate in the present investigation but after almost six months from the date of initiation. Both the parties filed their submissions. However, M/s Henkel Adhesives Technologies India Pvt Ltd did not file the importer questionnaire response as prescribed. The said parties also *inter alia* submitted that there is no legal bar on their participation in the present investigation after lapse of significant time from the date of initiation. It has been contended by the domestic industry that participation and submissions at such a very belated stage should be out rightly rejected and such parties should be declared as non-cooperative. However, without getting into the merit of tenability of the request for participation and the objections raised, the Authority has considered the submissions made by such parties to the extent they are relevant for the purpose of the present investigation and are addressed at appropriate places in this final finding.

xiii. The Authority made available non-confidential version of the evidences presented by various interested parties in the form of a public file kept open for inspection by the interested parties.

xiv. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry or not. Principles of Annexure III to the Anti-Dumping Rules have been followed to determine the Non-Injurious Price (hereinafter referred to as 'NIP').

xv. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis.

xvi. On site verification of the information provided by the domestic industry and also the exporters were conducted to the extent deemed necessary. Only such verified information with necessary rectification, wherever applicable, is relied upon for the purpose of this final finding.

xvii. Further information was sought from the applicant and other interested parties to the extent deemed necessary.

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

xix. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in hearings held on 11.8.2017 and 17.10.2017. All the parties attending the oral hearing were requested to file their written submissions and also rejoinders and such submissions are also considered for the purpose of this final finding.

xx. The Authority has considered 1st April, 2015 to March 31st 2016 (12 months) as the POI so as to undertake analysis on the most recent data. Thus, investigation was carried out for the period starting from 1st April 2015 to 31st March 2016(POI). The examination of trends, in the context of injury analysis, however, covered the periods Apr'12-Mar'13, Apr'13-Mar'14, Apr'14-Mar'15 and the period of investigation.

xxi. Import information as per secondary sources (IBIS) has been provided in the application by the applicant and the same has been relied upon at the initiation stage. However, the Authority has relied upon the transaction wise import data as collected from DGCI&S for the purpose of volume and value of subject goods into the country for the previous years and POI for the purpose of provisional finding and the same is relied upon in this final finding also.

xxii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties

as non-cooperative and recorded the present provisional finding on the basis of the facts available.

xxiii. In accordance with Rule 16 of the Rules Supra, the essential facts were disclosed by the Authority on 27th November 2017 to the concerned interested parties. Comments were requested by 6th December 2017 Comments received on the disclosure statement to the extent considered relevant by the Authority are considered in this final finding.

xxiv. ***In this final finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.

xxv. Exchange rate for conversion of US$ to Rupees considered for the POI is Rs 65.91per 1 US$ as per customs data.

C. **PRODUCTUNDER CONSIDERATION AND LIKE ARTICLE**

6. The product under consideration (PUC) in the present investigation is "Toluene Di-Isocyanate" (TDI) originating in or exported from China PR, Japan and Korea RP.

7. Toluene di-isocyanate (TDI) is an organic compound with the formula CH3C6H3 (NCO)2. Two of the six possible isomers are commercially important: 2,4-TDI (CAS: 584-84-9) and 2,6-TDI (CAS: 91-08-7). 2,4-TDI is produced in the pure state, but TDI is often marketed as 80/20 and 65/35 mixtures of the 2,4 and 2,6 isomers respectively. The PUC in the present investigation concerns TDI having isomer content in the ratio of (80:20) and any other grades are beyond the scope of product under consideration.

8. TDI is a clear liquid and is used for production of Flexible Polyurethane Foam, Furniture cushion, Industrial Gaskets, Protective pads for Sports & Medical use, Automobiles: Seats, Furniture, Lining, Sun visors etc., packing: Electronic items, Frozen Foods, Medicines, Audio-video Computer CD's etc.

9. TDI being an organic chemical is categorised under Chapter 29 of the Customs Tariff Act, 1975 and further under subheading 29291020 which pertains to Toluene di-isocyanate. However, as submitted by the applicant, this heading includes certain grades other than isomers (80:20) hence the classification is indicative only. It has also been claimed by the applicant that the imports of the subject goods have been reported under some other subheadings also such as 29094300, 29291090, 29291010, 38249090 and 39095000. An examination of the import data as per DGCI&S shows that imports during POI were under subheading number 29291020 and there were substantial imports under subheading 29291010 and 29291090 also. Hence, the Customs classification is treated as indicative only and in no way binding on the scope of the PUC in the investigation and any measures to be recommended to be imposed, if any.

10. Rule 2(d) of the AD Rules defines like article as follows:

> *"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 the characteristics closely resembling those of the articles under investigation".*

11. The applicant has claimed that there is no known difference between the subject goods exported from subject countries and that produced by the domestic industry. As submitted by the applicant, the product under consideration produced by the domestic industry and imported from subject countries are comparable in terms of essential product characteristics such as physical & chemical characteristics, manufacturing process &technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Consumers can use and are using the two interchangeably. The two are technically and commercially substitutable and, hence, should be treated as 'like article' under the Rules.

Views of Exporters, Importers, Consumers and other Interested Parties

a) In this investigation product under consideration is TDI having isomer content in 80:20 ratio, and any other grades of TDI have been excluded from the scope of PUC. Thus, TDI used in adhesives, which are subsequently used in Adhesives for food packaging, appears as included within the PUC. Food-safe TDI having isomer content in 80:20 imported for manufacture of food-safe adhesives should specifically be excluded from the scope of the current investigation. Henkel has submitted that they have imported the same for its use in Food based industry. Most of the participants are foam manufacturers and their end-use is clearly distinct from Henkel's end-use of the imported goods.

b) Henkel in its initial submissions has requested for exclusion of "food-safe TDI having isomer content in 80:20 imported for manufacture of food safe adhesives" from the scope of PUC. However, the company has changed the request of exclusion to "TDI having specific migration limit of 0.01 mg/kg of food and adherent to the EU Regulation 10/2011 for use in adhesives intended for food contact application.

c) Henkel has been in negotiations with the Petitioner for two years to procure food-safe TDI which can be used in the manufacture of food-safe adhesives. However, GNFC has been unable to meet regulatory requirements with respect to food safety and required TDI specifications. It is clear that the product imported by Henkel is not manufactured by GNFC.

d) The TDI produced by GNFC is not suitable for food-safe adhesives. Due to this, Henkel had to import such food-safe TDI. Henkel also cited certain past decisions while seeking exclusion of food safe TDI as claimed.

e) Mitsui Chemicals & SKC Polyurethanes Inc (MCNS) sought clarifications from the Authority whether two products namely "TM" and 'MT" are included/excluded in the scope of PUC or not. It has been submitted by MCNS that TM is a mixture of 50% or more of TDI and polymeric MDI (Polymethylenepolyphenyl/polyisocyanate or PMDI). Further, MT is a mixture of less than 50% of TDI and modified monomeric MDl, 4,4'- (Diphenyl methaneisocyanate). It has also been submitted by MCNS that there exists a vast difference in the chemical composition of TDI and TM/ MT and in fact TDI is used in the production/manufacturing process of TM and MT.

Views of the Domestic Industry

a) The PUC is clearly defined in the initiation notification and also in the provisional finding and the same may be adopted for the purpose of final finding as well.

b) Henkel has requested for exclusion of Food Safe TDI which is claimed to be imported by them from the scope of PUC. However, the company could not substantiate the need for exclusion Food Safe TDI. As such, the request for exclusion of food safe TDI is totally unsubstantiated and are highly vague. Also, the imports do not show any data concerning food grade TDI. Exclusion as asked is not tenable on this basis alone.

c) Henkel also did not file the details of their imports including invoices so that the facts of imports of food safe TDI can be verified by the Authority. Henkel did not file any IQ Response so that the difference of TDI imported by them and what is defined as PUC in the present investigation can be examined by the Authority.

d) A mere claim that the DI is not producing the same is not a valid claim as GNFC understands the TDI produced by it meets all the chemical and technical properties of food grade TDI. Henkel has never shown interest in purchasing TDI from GNFC. Permitting such exclusion shall lead to misuse of such exclusions and duties may be circumvented under the garb of excluded item.

e) Also, Henkel has not given any technical, chemical and commercial details of the food safe TDI for which they have sought exclusion. It is also not established by Henkel how food safe TDI would be identified at the customs frontiers and what was the name for this type used at the time of import. The import data do not show any description as to food grade TDI.

f) There are not sufficient technical reasons provided by Henkel while seeking exclusion of so called Food Grade TDI from the scope of PUC. It appears that the focus of Henkel is to get the material at dumped prices and for that a plea of grade issue is

brought in. Henkel could not come up with any cogent reason based on facts as to how the food safe TDI is different from the TDI produced by the DI.

g) Below are the observations of the DI about technical comparison of GNFC's product viz. TDI understood to be desired by Henkel;

i. TDI Purity: 99.9% (This is more than Lower Side Limit of 99.5% asked by Henkel)
ii. GNFC's TDI has % of isomer as: 80 +/-1: 20 +/- 1.
iii. Hydrolizable Chloride is less than 80 PPM, which is matching with requirement of M/s Henkel.
iv. Acidity of HCl remains less than 40PPM, which is matching with requirement of M/s Henkel.
v. Colour: Generally remains 15 APHA +5.
vi. NCO remains minimum at 48.13 (% w/w), which is higher than Lower limit of M/s Henkel.
vii. Heavy Metals: After a meeting with M/s Henkel in March-2016, GNFC has tried to analyse heavy metals in its laboratory. GNFC could not find any traces of heavy metals in analysis. Also, in this regards, it was decided that M/s Henkel will ask for TDI sample for analysis at their end but they have never asked for the same.

h) With regard to the aspect of heavy metals, GNFC is ready to give TDI sample to M/s Henkel and Henkel can prove their claims accordingly. M/s Henkel has never shown interest in purchasing TDI from GNFC in the past. In any case, there is nothing called food grade TDI and TDI produced and sold normally is highly toxic in nature.

i) The above analysis clearly shows that there are no technical reasons for Henkel to seek exclusion of so called Food Grade TDI from the scope of PUC. It appears that the focus of Henkel is to get the material at dumped prices and for that a plea of grade issue is brought in. GNFC can give its TDI for any sample testing by Henkel and Henkel should come up with the a cogent reasoning based on a technical report that how are they justified in seeking exclusion of TDI type mentioned by them and no exclusion should be permitted merely on such ground.

j) GNFC is a TDI producer. TDI purchased either domestically or imported by Henkel will have to undergo further processing at the end of Henkel to suit the requirements of products produced by them. M/s Henkel is converting TDI to adhesive which is used in plastic packaging.

k) Henkel has requested for exclusion of Food Safe TDI from the scope of PUC. However, while seeking an exclusion of an imported product, Henkel has not submitted the details of the product that they have imported before the Authority. No IQR has been submitted. No details as to volume, price, other details etc. of that

import are submitted and a mere request for exclusion is made. In fact Henkel in the past has requested for exclusion of "food-safe TDI having isomer content in 80:20 imported for manufacture of food safe adhesives" and have subsequently changed the request for exclusion to "TDI having specific migration limit of 0.01 mg/kg of food and adherent to the EU Regulation 10/2011 for use in adhesives intended for food contact application". The Authority may take note of such inconsistencies in the claims of the importer.

l) Also, the submissions by Mitsui Chemicals & SKC Polyurethanes INC are also not of any merit and the issue raised itself are of no basis. TDI alone is included in the scope of PUC and the same is properly defined in the initiation and also in the provisional finding.

EXAMINATION BY THE AUTHORITY

12. The product under consideration (PUC) in the present investigation is "Toluene Di-Isocyanate" (TDI) originating in or exported from China PR, Japan and Korea RP.

13. Toluene di-isocyanate (TDI) is an organic compound with the formula CH3C6H3 (NCO)2. Two of the six possible isomers are commercially important: 2,4-TDI (CAS: 584-84-9) and 2,6-TDI (CAS: 91-08-7). 2,4-TDI is produced in the pure state, but TDI is often marketed as 80/20 and 65/35 mixtures of the 2,4 and 2,6 isomers respectively. The PUC in the present investigation concerns TDI having isomer content in the ratio of (80:20) and any other grades are beyond the scope of product under consideration.

14. TDI being an organic chemical is categorised under Chapter 29 of the Customs Tariff Act, 1975 and further under subheading 29291020 which pertains to Toluene di-isocyanate. However, as submitted by the applicant, this heading includes certain grades other than isomers (80:20). Hence, the classification is indicative only

15. The Authority has examined the claims and notes that there is no known difference in subject goods produced by the domestic industry and exported from subject countries. The subject goods produced by the domestic industry and that imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the above, the Authority holds that the products manufactured by the Applicant constitute like article to the subject goods imported into India from the subject countries within the meaning of Rule 2 (d) of the AD Rules.

16. With regard to the request of M/s Henkel Adhesives Technologies India Private Ltd. to exclude Food Safe TDI from the scope of PUC, the issue has been examined after

considering the submissions of Henkel and the domestic industry. While the crux of the argument of Henkel is that GNFC is not producing and supplying the food safe TDI which is primarily used by Henkel hence the inclusion of same in the scope of PUC is not justified. GNFC submitted that the TDI produced and supplied by them have all the essential properties of food safe TDI as required by Henkel though Henkel has not placed any order for the same in the recent past. As per GNFC, TDI is by nature toxic and when it is put through further chemical reactions by the users including adhesives intended for food contact application, the toxic elements get neutralised and TDI as such cannot be produced and sold without such toxic property which is in the basic nature of the product. GNFC also submitted inter alia that exclusion of such a type would lead to wide misuse rendering any duties imposed as not effective. It is also noted that Henkel has initially requested for exclusion of Food Safe TDI from the scope of PUC. However, subsequently changed the request for exclusion to "TDI having specific migration limit of 0.01 mg/kg of food and adherent to the EU Regulation 10/2011 for use in adhesives intended for food contact application". It is noted that there is no facts on record in this regard submitted by Henkel to substantiate the claims and enable the Authority to consider their request. After considering the submissions, the Authority notes that the facts as available on record do not show that the food safe TDI as claimed by Henkel is a different product from the TDI as defined in this investigation produced and sold by the domestic industry in terms of technical and commercial parameters. Accordingly, the request made by M/s Henkel Adhesives Technologies India Private Ltd to exclude the food safe TDI is not accepted.

17. With regard to the clarification sought by Mitsui Chemicals & SKC Polyurethanes INC, it is noted that this matter has been dealt in the provisional finding itself to which the said exporter did not provide any comments. The view taken in the provisional finding stands relevant for the purpose of this final finding also since, post oral hearing, they did not offer any comments in this regard and has been reiterated as below:

" *There have not been any submissions made by any of the responding interested parties vis-à-vis the definition and scope of the PUC, except one exporter, namely Mitsui Chemicals & SKC Polyurethanes Inc (MCNS). MCNS sought clarifications from the Authority whether two products namely "TM" and 'MT" are included/excluded in the scope of PUC or not. It has been submitted by MCNS that TM is a mixture of 50% or more of TDI and polymeric MDI (Polymethylenepolyphenyl/polyisocyanate or PMDI). Further, MT is a mixture of less than 50% of TDI and modified monomeric MDl, 4,4'- (Diphenylmethane diisocyanate). It has also been submitted by MCNS that there exists a vast difference in the chemical composition of TDI/PUC and TM and MT and in fact TDI is used in the production/manufacturing process of TM and MT. After carefully examining the submissions of MCNS, the Authority notes that the definition and scope of PUC is clearly provided in the initiation notification and also in this provisional finding which should help MCNS to gauge whether their product falls under the PUC category or not. With the given facts, it does not appear to be essential and practical on the part of the Authority to provide a specific opinion on the inclusion or exclusion of two different products that are claimed to be exported by MCNS into India. PUC*

fulfilling the definition herein above alone shall come under the ambit and scope of present investigation and not any other products."

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

18. The Application has been filed by M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited as the domestic industry.

19. The applicant company has claimed that they are the sole producer of subject good in India. As per the evidence available on record, the production of the applicant company constitutes "a major proportion" of the domestic production; in fact 100% share of total domestic production.

20. Rule 2 (b) of the AD rules defines domestic industry as under;

> *"(2) (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 relate 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. It is noted that the application based on which the present anti-dumping investigation is initiated has been filed by M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited as the "domestic industry" concerning the subject goods in India. As per the claims of the applicant, M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited is the sole producer of the subject goods in India. It is also noted that there are not any rival submissions on the aspect of domestic industry and standing filed by any of the opposing interested parties.

22. None of the interested parties have made any submission with regard to the scope and standing of the domestic industry. The applicant, however, submitted that they are the sole producer of the subject goods in India and qualifies to be treated as the "domestic industry" within the meaning of Rule 2 (b) for the purpose of present investigation.

23. Since the production of the applicant accounts for "a major proportion" in the total production of the subject goods in India [in fact 100%], the Authority holds that the applicant satisfies the standing criteria under Rule 5(3)and constitutes domestic Industry within the meaning of Rule 2(b) of the AD Rules.

E. CONFIDENTIALITY

Views of Exporters, Importers, Consumers and other Interested Parties

i. The Petitioner has claimed excessive confidentiality pertaining to various details in the Proforma IV A and indexed trend is also not provided for certain parameters and the same are unduly condoned which is prejudicial to the Respondent's interests. The Authority may seek the withheld information from the Petitioner, or in the alternate, a suitable non-confidential summary thereof be provided.

ii. Part VI (Costing Information) has been claimed as confidential. Parameters prescribed in Formats B, CI and CII, D and E have been entirely claimed as confidential. Such claims are in violation of the decision of the Hon'ble Supreme Court of India in *Sterlite Industries (India) Ltd. v. Designated Authority 2003 (158) E.L.T. 673 (S.C.)* and also in the case of RIL Vs. Designated Authority [2006 (202) ELT 23 (SC)].

iii. It is necessary for the applicant industry to disclose all the necessary information or its non-confidential version in accordance with the provisions of law so that other interested parties are in a position to defend their interests which is not done in the present case.

iv. Designated Authority has not provided the segregated DGCI&S data in soft copy. The preliminary findings also do not record that any party had claimed confidentiality under any other law on such data.

Views of the Domestic Industry

i. Excessive Confidentiality in submissions is adopted by responding producers/exporters and importers. The NCV version of the EQ Responses and IQ Responses do not permit any reasonable understanding of the claims of such parties vis-à-vis dumping and the detail of import that have been made in the country by such responding parties.

ii. NCV versions of the documents are provided in a manner restraining the domestic industry from making any evaluation of the same.

iii. The following basic information provided by the producer/exports/importers respectively cannot be claimed as confidential;

a. Information on total volume of exports/imports from subject countries,
b. Average price of imports from subject countries,
c. Holding Company details and also the name of the concerned producers where exporters/traders have filed the response. In fact, none of the exporters/traders participating have disclosed the names of the

respective producers name whose materials have been exported by such parties.

iv. While the rules requires the parties providing information on a confidential basis to furnish non-confidential summary thereof, the responding parties have resorted to a methodology convenient to them and literally restricted the petitioner from gauging the factual position with regard to dumped imports made by them. Excessive confidentiality adopted by the responding parties also contravenes the findings of the Appellate Body in European Communities-Anti-Dumping Measures on certain Iron or Steel Fasteners from China (WT/DS 397/AB/R dated 15th July, 2011) wherein the Appellate Body has interpreted Articles 6.5 and 6.5.1 of the Anti-dumping Agreement concerning confidentiality.

v. The petitioner has claimed certain business sensitive information as confidential by providing adequate reasoning. Information claimed as confidential has been followed by an indexed summary wherever possible. In fact, it is the opposing parties which have resorted to excessive confidentiality and the DI is not provided with any meaningful summary of their data. For example, when GNFC disclosed all information with regard to volume parameters, exporters and importers did not disclose any volume information in its NCV response and not even any summary/range of the same. Also, it should be noted that the DGCI&S summary data relied upon is available in the public file which is self- explanatory on which all transactions are considered as that of PUC and others etc. It is not obligatory to provide the same in excel format. There isn't any violation of the jurisprudence set in Sterilite case by the DI.

vi. The contentions of deficiencies in the petition are all baseless and have no legal or factual basis and all the contentions are denied as bereft of any merit. There isn't anything in the rule which says contents of proforma IV A should be disclosed to all interested parties as it is. It also needs to be noted that financial statements and balance sheets of the company is provided and no such statements product wise as demanded by certain parties is nether maintained nor statutorily required and the claim is not of any merit.

EXAMINATION BY THE AUTHORITY

24. Various submissions made by the opposing interested parties and also domestic industry with regard to confidentiality and considered relevant by the Authority are examined and addressed herein below.

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

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

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

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

26. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties.

27. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. Various discussions in this final finding are self-explanatory on the other contentions of the parties on confidentiality aspect.

28. With regard to the submission of confidentiality qua the DGCI&S transaction wise import data, it is noted that the import information as per DGCI&S which has been relied upon, the details of which is made available both in the provisional finding and also the final findings

E. MISCELLANEOUS ISSUES

Views of Exporters, Importers, Consumers and other Interested Parties

i. The initiation of the present investigation is bad in law and therefore must be terminated immediately. Further, even if the initiation is deemed to be valid, the requirements of dumping, injury to the domestic industry and causal link are not fulfilled.

ii. There are serious deficiencies in the Petition which are sufficient for terminating the investigation.

iii. Post-POI data must be considered before imposition of Final Duty and Duty, if any, must be on Reference Price Basis.

iv. Unique factual situation of the Petitioner and the selected POI mandates consideration while examining dumping and injury in the present case. The POI, i.e., FY 2015-16 follows an exceptional and anomalous period for the Petitioner. Due to the market upheaval and changes in 2014, the economic parameters of the Petitioner have been adversely affected. Even the calculation of Petitioner's normal cost of production and non-injurious price need to include these considerations.

v. The Balance sheet and financial statements for the subject year for the company and the specific product in question have not been provided.

vi. The segregation of DGCI&S data for the PUC and others and how the raw import data has been sorted by the Authority is not clear. The Authority should provide the complete transaction-wise raw import data as well as sorted import data in MS-Excel format.

vii. Recommendation of provisional duty not in accordance with the specific requirement of Section 9B of the Customs Tariff Act, 1975 (hereinafter referred to as the "Act") and Rule 12 of the AD Rules. Thus, the preliminary findings are without jurisdiction, illegal, arbitrary, unreasoned and in clear disregard of the principles of natural justice.

viii. The first condition for imposing preliminary findings is with regard to dumping, injury (material injury) and causal link during the period of investigation while the second precondition is in relation to the injury during the course of investigations which, by definition, is subsequent to the period of investigation (POI). In the instant case the Authority while recommending its preliminary findings failed to appreciate such requirements. The Designated Authority also failed to record any factor which can be construed as a "further" determination "during the course of the investigation" as it being a mandatory requirement.

ix. Domestic Industry has not been able to prove their case of injury on any of the parameters provided in the law and therefore has miserably failed to establish their case in terms of the requirement of the law.

x. The Domestic Industry is not suffering any injury and the imposition of duty would create an imbalance in trade rather than counter-balance the negative effects of alleged dumping.

xi. The DI is catering to substantial Indian demand (without any duty imposition) and the prices of TDI have globally increased in the period post-POI.

xii. The DI's production facilities are unreliable and prone to constant shut-down.

xiii. In light of the Petitioner's new capacities of about 50,000MT which it has admittedly had operational difficulties with, the Authority must consider that the duty may be imposed for a shorter, limited duration allowing the Petitioner's capacities enough time to stabilize. Any duty beyond a reasonable extent must be discouraged.

xiv. Higher anti-dumping duty should be imposed for Japan on account of non-cooperation by Japanese producer/exporters.

xv. ADD is an attempt to establish monopoly

Views of the Domestic Industry

i. Importers/users namely M/s Indian Polyurethane Association (IPA in short) and M/s Henkel Adhesives Technologies India Private Ltd have sought to participate in the present investigation at a very belated stage. The public file shows that IPA has first time responded on 4th April, 2017 by way of filing comments on the PF and Henkel responded on 2nd May, 2017 which is almost 6 months after the date of initiation i.e 5.10.2016. Such delay is when the initiation has clearly set the time limits to file any responses including questionnaire responses.

ii. The deadlines set to reply were are as per Rule 6 (4) of the AD Rules and the said rule is applicable for all the 'interested parties' in an investigation and the interested parties are defined in the AD Rule at Rule 2 (c). The parties who do not fall in the category of 'interested parties' have no role in a specific AD investigation.

iii. IPA has submitted that there is no bar on an interested party like IPA to join an investigation at the time of their choosing. The claim is not correct and the provisions of Rule 6(4) are applicable on all 'interested parties' to an investigation and any party who do not adhere to the provision of Rule 6(4) of the AD Rules with regard to time limits to respond to the initiation cannot be treated as an interested party under any circumstances and their submissions whatsoever also cannot be taken on record.

iv. The submission made by IPA dated 4th April, 2017 has nothing to prove their credentials as the association of users of the subject goods as provided in the Rule. IPA failed to provide any registration certificate, MoA or AoA, list of their members, IQ Responses by the members etc that the credentials of the Association are also in question apart from the delay in responding to the Authority. Based on this alone, IPA cannot be treated as an interested party under the Rules for the purpose of present investigation. They should be declared as non-cooperative party.

v. Henkel has also not filed any importer questionnaire response. In the absence of importer questionnaire response, the credential of Henkel and also the details of their import of subject goods can be examined and on this ground alone Henkel should not be treated as a cooperative importer or interested party for the purpose of present investigation.

vi. The submissions of exporters on public interest in India cannot be taken on face value. The Authority has found significant dumping margin and injury margin in case of exports made by such exporters also. Such parties are trying to put forth all arguments to avoid any anti-dumping duties on it which it is otherwise liable now. Catering to about 50% of the Indian demand did not help the DI to achieve profits as the prices were suppressed and depressed by dumped imports and the price underselling has also been very significant.

vii. Any claimed increases in global prices post POI and also domestic situation post POI are irrelevant and such changes would at the best be the subject matter of a review. It is also a baseless argument in the context of public interest that the DI's plant is prone to shut down and is unreliable. GNFC has decades of experience in producing TDI and its new plant is also operating with all the stability that the Indian users can rely on GNFC for TDI.

viii. Certain parties have requested to consider post POI data before publishing the final finding. It is submitted that post POI data has no relevance in the context of a fresh investigation and the claim has no legal sanctity. Any changes post POI can at the best be a subject matter of an MTR under Rule 23 and cannot be considered for the purpose of Rule 17 and 18. This is a settled issue before the Authority and similar view on this issue has been taken by the Authority in plethora of investigations in the past.

ix. The contentions of opposing parties against provisional duties are not correct. Provisional duties were found essential and have been recommended by the Authority and the Central Government has imposed the same. The provisional finding elaborated on the facts of the present case and why was it essential to impose provisional duties pending further investigation. The PF clearly contains the 'further'

determination at appropriate places and PF needs to be confirmed at the time of final finding.

EXAMINATION BY THE AUTHORITY

29. Various interested parties have raised several issues with respect to the present investigation, including methodologies of dumping determination and injury claims of the domestic industry. While the issues regarding the dumping and injury determination is addressed in the appropriate places in this finding, the general issues raised by the parties to the investigation are examined and addressed as provided hereunder;

i. With regard to the contention that the initiation of the present investigation is bad in law and therefore must be terminated immediately and the requirements of dumping, injury to the domestic industry and causal link are not fulfilled, the Authority notes that the case was initiated based on application filed by the domestic industry prima facie establishing dumping of subject goods from subject countries and consequential injury to the domestic industry as provided in the Rule. Detailed findings as to the dumping, injury and a causal relationship are provided in this finding which is self-explanatory. Thus, the claims are unsubstantiated and void of merits.

ii. With regard to the contention that there are serious deficiencies in the Petition which are sufficient for terminating the investigation, it is noted that the petition based on which the present investigation was initiated contained all the relevant details to substantiate the claims and wherever required further details were sought from the petitioner. Thus, the claims are unsubstantiated and void of merits.

iii. With regard to the submission that Post-POI data must be considered before imposition of Final Duty and Duty, if any, must be on Reference Price Basis. It is noted that the authority is required to examine and consider only the POI and previous three years data as undertaken at the time of initiation under the AD Rules for the determination of dumping and injury. With regard to the request for reference price duty, it is noted that the form of duty which is found appropriate to achieve the envisaged purpose of duty is adopted.

iv. With regard to the claims of unique factual situation of the Petitioner that the selected POI mandates consideration and even the calculation of Petitioner's normal cost of production and non-injurious price, it is noted that POI selected has been the most recent and appropriate period to examine the various parameters as envisaged in AD Rules and the NIP is also determined as per the principles in Annexure III to the Rules.

v. With regard to the contention that the Balance sheet and financial statements for the subject year for the company and the specific product in question have not been provided, it is noted that the relevant information in this respect as

prepared by the petitioner has been provided and are also available in the public domain.

vi. With regard to the claim that the segregation of DGCI&S data for the PUC and others, the authority notes that raw data has been segregated and based on the data for the PUC has been considered for analysis which formed the basis for the final findings.

vii. With regard to the contention that recommendation of provisional duty is not in accordance with the specific requirement of Section 9B of the Customs Tariff Act, 1975 (hereinafter referred to as the "Act") and Rule 12 of the AD Rules, thus, the preliminary findings are without jurisdiction, illegal, arbitrary, unreasoned and in clear disregard of the principles of natural justice, it is noted that the provisional finding explains the legal and factual back ground which has led to the recommendation for provisional duties pending further investigation.

viii. With regard to the contention that the Authority failed to appreciate the requirements of provisional finding while notifying the same along with a "further" determination, it is noted that the provisional finding was recommended in consonance with the legal requirements and it was found appropriate to recommend interim measures after provisionally examining the facts concerning dumping, injury and their causal relation. The provisional finding showed existence of ingredients essential for recommendation of provisional measures.

ix. With regard to the claim that the Domestic Industry has not been able to prove their case of injury on any of the parameters provided in the law and therefore has miserably failed to establish their case in terms of the requirement of the law, it is noted that present finding is self-explanatory since it has dealt all relevant injury parameters.

x. With regard to the contention that the Domestic Industry is not suffering any injury and the imposition of duty would create an imbalance in trade rather than counter-balance the negative effects of alleged dumping, it is noted that while the present finding ipso-facto addresses the issue of injury, the purpose of imposition of anti-dumping duties is to remove the injurious effects of dumping and imposition per se would not lead to any trade imbalance as claimed.

xi. With regard to the claim that the DI is catering to substantial Indian demand (without any duty imposition) and the prices of TDI have globally increased in the period post-POI, it is noted that the dumping and consequent injury during the POI determined is the subject matter of the present investigation.

xii. With regard to the claim that the DI’s production facilities are unreliable and prone to constant shut-down, it is noted that petitioner is in production of TDI

for several years and have expanded the capacity a few years back and are supplying the subject goods from its facilities as a regular producer.

xiii. With regard to the submission that duty may be imposed for a shorter, limited duration considering the situation therein, the view of the Authority on the quantum of duty required and its duration is provided in the concluding part of this finding after considering all relevant facts of this investigation and what is provided in the rule which is self- explanatory..

xiv. The Authority has also considered the contentions of the domestic industry vis-à-vis the interest shown by M/s Indian Polyurethane Association (IPA in short) and M/s Henkel Adhesives Technologies India Private Ltd to participate in the present investigation but after lapse of significant time from the date of initiation. It is noted in this respect that consideration of the issues raised by the said parties at this juncture may not impede the current investigation in any manner and on that ground the issues raised by the said parties are addressed in this finding.

F. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

30. The present investigation has been initiated on 5.10.2016 and it was open for the producers/exporters from China PR in the present investigation to rebut the NME presumption for the purpose of normal value determination. As per Paragraph 8 of Annexure I of the Anti-dumping Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR (in the present case) provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:

a. the decisions of concerned firms in China PR 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.

31. It is noted that none of the producers/exporters from China PR who have exported the subject goods to India during the POI have responded to the Authority in the present investigation by filing the required EQ Response and MET Response. Thus, the presumption of NME vis-à-vis China PR stands un-rebutted in the present investigation by the Chinese producer/exporters.

Views of Exporters, Importers, Consumers and other Interested Parties

i. Individual margin should be granted in the name Hanwha Chemical Corporation and not in the name of Hanwha Fine Chemical Corporation which has ceased to exist as a legal entity.

ii. Preliminary duties were notified considering Hanwha Fine Chemical Corporation as the exporter, who was not the legal entity anymore, instead of Hanwha Chemical Corporation, despite the fact that the proper disclosure was made at the appropriate time with the supporting documents regarding Merger of Hanwha Fine Chemical Corporation in Hanwha Chemical Corporation within the tenure of Period of Investigation itself.

iii. Evidences such as contract of Company Merger in Korean as well as translated copy in English, Relevant Extract of Commercial Act of Korea under which the merger of HFCC with HCC penetrated, Audited Annual Financial Statement of Hanwha Chemical Corporation (HCC) for 2016, Shareholder's list as on 31.12.2015 of HFCC, Post POI Export to India were submitted.

iv. Hanwha does not procure any inputs from the related party. Hanwha only procures steam from the related party which accounts for not more 0.01% of the total cost of production of subject goods.

v. At the time of preliminary findings, Hanwha's cost of production was not considered for computation of normal value because of the reason that the cost of manufacturing intermediaries such as TDA and CDC were not provided in the response. In the present scenario, Hanwha has provided the cost of goods of TDA and CDC during the production of subject goods at the time of verification including the cost of basic raw material. Subsequently, additional documents were also provided on the specific queries of the Authority. Thereafter, stage wise cost sheet of subject goods were also demanded, which was also provided along with justification. In view of the same, it is requested that the normal value should be determined on the basis of the verified

information provided by Hanwha and not on the basis of the best estimates as done at the time of preliminary finding.

vi. Hanwha has made exports through four different trading channels which were verified by the Authority during the onsite verification. Among these, there were four transactions of exports made through TAJ AL MULOOK of Dubai to Indian Customer. The Indian Customer thereafter transhipped all such goods to other countries without entrance of subject goods into Indian Customs. Since, these goods were not consumed in India, Hanwha requests for exclusion of such goods for the purpose of Anti-dumping duty computation.

vii. Government of Korea submitted that the name HCC instead of HFCC should be used in all relevant notifications. Korean Government also submitted that the information submitted by HCC should be used for all calculation purposes in view of Para 3 of Annexure II to the WTO AD Agreement. It has been submitted by the Korean Government that any duty on TDI will affect the TDI users in India and requested not to impose any anti-dumping duty.

viii. The normal value for China in the current investigation may be determined on the basis of their domestic sales and the cost of the subject goods in view of the fact that the period of 15 years for disregarding the domestic prices or costs of Chinese producers not being on market economy conditions as provided in para 15(a)(ii) of the Protocol of Accession of the People's Republic of China to WTO, has expired on 11th December 2016 in terms of para 15(d) and have currently become non-operational. Any other methodology used for the determination of normal value for Chinese exporters would be in violation of the obligations of India under the WTO.

Views of the Domestic Industry

a. China PR should be treated as Non Market Economy country for the purpose of present investigation and Normal Value in case of Chinese producers should be determined as per the provisions of Annexure I Para 7.

b. Chinese producers have been denied MET status in several investigations including recently concluded investigations by both Indian Authority and other countries like EU, USA, Australia etc as a part of various anti-dumping investigations by treating China PR an NME country.

c. MET status can be given only in the event of fulfilment of all the MET conditions by the responding producers/exporters and not otherwise. Thus, requirements of para 8 (3) of Annexure I of AD rules has to be fulfilled holistically to obtain MET status.

d. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity.

e. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values. The expression "substantially reflect market values" has been widely interpreted to mean that the price of these inputs must be comparable to the prices prevailing in the international market. The fact that such prices are comparable to the price prevailing in China is grossly insufficient.

f. Market economy status cannot be given unless the responding exporter establishes that their books are audited in line with international accounting standards. Market economy treatment must be rejected in such situations where Chinese exporters are unable to establish that their books are consistent with International Accounting Standards (IAS).

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

h. The onus is on the responding Chinese producer/exporters to establish that they are operating under market economy conditions after satisfying all the conditions mentioned in AD Rules.

i. Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group have not filed the response, market economy status must be rejected, irrespective of the fact that the other companies of the group involved in production or sale of the product under consideration have filed the response.

j. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been fully transparent and completely established through documentary evidence.

k. There are not any cooperating producers/exporters in the present investigation who have rebutted the presumption of NME status by filing all relevant information as per MET Questionnaire. China PR should be treated as Non Market Economy country based on this fact alone.

l. The applicant has submitted normal value and dumping margin as per the available information and methods permissible specified in the AD Rule and

relevant annexure to the rule. Details of such calculations are provided in the NCV application which is elaborate and contains all essential specifics. The Authority may rely on such information all practical purposes in this investigation in case the concerned producer/exporters fail to meaningfully cooperate.

m. The provisions of China Accession Treaty have no implications on the present case since the present case is initiated on 5.10.2016 and the POI selected is April 2015- March 2016.

n. It is evident from the EQ Response filed by HFCC that the entity namely Hanwha Fine Chemical Corporation (HFCC) merged into a business division of Hanwha Chemical Corporation (HCC) on 29th February, 2016. However, the EQ Response is filed by providing details of HFCC as the entity which has no legal or factual justification.

o. The questions in the entire EQ Response should have been answered by treating HCC as the entity with the given facts and not HFCC which ceased to exist on 29th February, 2016. In this scenario, the Authority should treat the entire response as incorrect and incomplete and is not of any pursuable legal tenability.

p. All the questions are answered in the concerned Response by treating HFCC as the relevant entity. For example list of shareholders, details of factories involved etc of HFCC is provided whereas what is relevant as can be seen from the facts disclosed is replies to these questions by **HCC** as the entity and not HFCC which ceased to exist on 29.2.2016 well within the POI. The incorrect and inappropriate answers provided cannot be rectified at this juncture and the Response as such should be rejected.

q. It can be noted that any response by HCC would have to be significantly different from that of HFCC and the examination of EQ Response filed by HFCC instead of HCC would not help the Authority to conduct any examination of dumping. HFCC ceased to exist on 29.2.2016 and the entity relevant to have filed EQ Response in the given scenario is HCC and HCC did not file any EQ Response in effect.

r. Entire questions in the EQ Response should have been answered by HCC and HCC alone could have sought individual margin and not HFCC. In any case, even if an individual margin is given to HFCC, it is of no use as HFCC is not in existence.

s. It is submitted by HCC in the NCV repose that there is one channel involved in the export of PUC into India, however, the name of such exporter is not

provided. It needs to be seen whether such exporter involved have filed exporter response.

t. HCC has resorted to excessive confidentiality and did not disclose the name of exporter in the channel. How can a name of the exporter be treated as confidential? Can the Authority treat name of an exporter as confidential in the duty table if at all an individual margin is provided? Thus, basic information is kept as confidential in absolute disrespect to the confidentiality provisions and such claim of confidentiality is absolutely bogus which should be rejected by the Authority.

u. It is evident from the EQ Response filed TAJ AL Mulook that TAJ AL Mulook is only an exporter/trader and not a producer of subject goods. However, there is no disclosure in the EQ Response as to who all is the producer/s of the subject goods exported by TAJ AL Mulook?

v. Without cooperation by way of full EQ Response by the corresponding producer, response filed by TAJ AL Mulook cannot be considered for individual margin determinations.

w. It is evident from the EQ Response filed PP and Y International Co. Ltd that PP and Y International Co. Ltd is only an exporter/trader and not a producer of subject goods. However, there is no disclosure in the EQ Response as to who all is the producer/s of the subject goods exported by PP and Y International Co. Ltd?

x. Without cooperation by way of full EQ Response by the corresponding producer, response filed by PP and Y International Co. Ltd cannot be considered for individual margin determinations.

y. It is evident from the EQ Response filed IMS Corporation that IMS Corporation is only an exporter/trader and not a producer of subject goods. However, there is no disclosure in the EQ Response as to who all is the producer/s of the subject goods exported by IMS Corporation?

z. Without cooperation by way of full EQ Response by the corresponding producer, response filed by IMS Corporation cannot be considered for individual margin determinations.

aa. It is evident from the EQ Response filed Everlite Korea Co., Ltd that Everlite Korea Co., Ltd is only an exporter/trader and not a producer of subject goods. However, there is no disclosure in the EQ Response as to who all is the producer/s of the subject goods exported by Everlite Korea Co., Ltd?

bb. Without cooperation by way of full EQ Response by the corresponding producer, response filed by Everlite Korea Co., Ltd cannot be considered for individual margin determinations.

cc. EQ Response filed by the exporter is binding in nature while determining individual margin. EQ Response has been filed by Hanwha Fine Chemical Corporation (HFCC) and not by Hanwha Chemical Corporation (HCC). Thus, granting Individual Margin to HCC does not arise at all. Rule 17 (3) says that "the designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:" and the known exporter or producer concerned in the EQ Response filed is HFCC and not HCC.

dd. The issue is not only the correctness of merger of HFCC and HCC as it stands today. Had the EQ Response been filed by HCC, then it was incumbent upon the Authority to examine the correctness of merger. However, since the EQ Response was filed by HFCC which is an entity ceased to exist on 29th February, 2016 and not by HCC, the EQ Response itself is infructuous and no examination can be done on merit.

ee. Admittedly, Hanwha has provided the cost of captively produced inputs at the time of verification only including the cost of basic raw material, which were consumed for manufacturing TDA and CDC such as DNT, H2, Chlorine etc. Thus, the Response was incomplete at the time of filing and response needs to be rejected on this ground alone.

ff. It is claimed by Hanwha that the Indian Customer transhipped all such goods from TAJ to other countries without entrance of subject goods into Indian Customs and such goods were not consumed in India. The entire claim by Hanwha is unsubstantiated and we request the Authority not to accede to the request of Hanwha on face value to exclude such exports. Interestingly, Hanwha who is the producer from Korea is claiming that material exported through TAJ was transhipped by Indian customer but neither TAJ nor the concerned Indian customer have submitted any documentary evidences to substantiate the claim. In fact, TAJ filed the EQ Response as an exporter of the goods to India and it was nowhere mentioned that the material was not destined for Indian consumption. Goods exported by TAJ were at dumped levels and have caused injury to the domestic industry among other producer/exporters and such exports cannot be excluded for the purposes of margin calculations as prayed by Hanwha.

gg. The response filed by Hanwha may be rejected and no individual margin for Hanwha should be determined based on its response which is grossly incomplete and incorrect.

hh. There is no basis to say that normal value for China PR should be based on price in China PR. There aren't any responses from producer/exporter who have exported the PUC during the POI from China PR in the present case. Hence, Normal Value (NV) has to be based on best available information and also by applying the principles of non-market economy.

ii. The contentions that reduction in price of TDI are on account of reduction in international price of raw materials has no basis. Decline in the price of raw materials over the years has no meaning since the dumping margin found is positive. The exporters have been selling at a higher price in its domestic market even after such reduction in major raw material prices and resorted to exports at lower prices to India viz. it domestic prices resulting in dumping.

jj. The reduction in Toluene price does not negate the admitted dumping margin in case of cooperative exporters and also country wide margins. Raw Material (RM) prices have shown declines but what matters is the difference in prices domestically offered by the exporters and at what price they have exported to India. As long as the margin of dumping is positive, reduction in RM prices have no meaning and the DI is clearly fighting against the practice of dumping adopted by the producers/exporters of subject goods from subject countries and not any mere reduction in price of the TDI on account of any decline in RM prices.

EXAMINATION BY THE AUTHORITY

32. The Authority notes that the relevant provisions laid down under Annexure I to the Antidumping Rules with regard to " Market Economy Treatment" are as follows;

> *[8. (1) The term "non-market economy country" means any country which the designated authority determines as 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 sub-paragraph (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 anti-dumping 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 nonmarket 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 sub-paragraph (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]."

33. The Authority also notes that Article 15 of China's Accession Protocol 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."

34. Article 15 implies that provisions of one of the subparagraphs shall expire in 15 years from the date of China's Accession. The provisions of this paragraph expired on 11th December, 2016. Since the factum of dumping causing injury to the domestic industry is established based on investigation period, the conditions prevalent during the investigation period alone is relevant, appropriate and necessary for the purpose of present investigation. The Period of Investigation (POI) for the purpose of the present review is April, 2015 to March, 2016. Since the subparagraph of Article 15 was in existence during the period of investigation, the Authority 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 prevailed in the industry producing the like product with regard to manufacture, production and sale of that product.

35. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules. However, there are not any participation by producers/exporters from China PR who have exported the subject goods to India during the POI, therefore, it is noted that the presumption of NME which was prevalent during the POI is not rebutted as provided in the Rule. It is also noted that since investigation has been initiated on 5.10.2016 and the POI determined for the present investigation is April 2015-March 2016, the provisions of China Accession Treaty which says that WTO Members could use an NME antidumping methodology till December11, 2016 in case of an antidumping investigation against Chinese producer/exporters is well applicable in the present investigation vis-à-vis China PR.

36. With regard to the contentions raised by the domestic industry regarding the correctness of EQ Responses by Hanwha and the correctness of its cost, the Authority notes that the issue is examined in detail by taking into account the claims of Hanwha and also the submissions of the domestic industry. Individual margin for Hanwha Fine Chemical Corporation (HFCC) was determined in the provisional finding as the preliminary examination of the response showed that the entity in question was HFCC and the preliminary view was taken on such basis pending further investigations. The entity which was in effect at the time of filing the EQ Response was Hanwha Chemical Corporation (HCC) which was formerly known as Hanwha Fine Chemical Corporation (HFCC) and the entity HFCC ceased to exist as on 29.2.2016. The records of the company were subjected to examination to ascertain the facts of merger of HFCC in HCC eventually and it is noted that the claims are as per records of the company which has been subjected to verification. Submissions were also made by Hanwha that the entity which has filed the response effectively is HCC and the name of HFCC was used in the EQ Response only because the exports during the POI were made by HFCC. Considering the records of the company that has been submitted for verification and based on the verification, it is noted that granting individual margin concerning Hanwha Chemical

Corporation shall not be against the facts as per records and accordingly the individual margins are determined in this final finding considering Hanwha Chemical Corporation.

37. With regard to the contentions of the domestic industry that the company did not file complete details along with the EQ Response and various information has been submitted at the time of verification and thereafter, the Authority notes that information required from HCC for the determination of their cost of production concerning the subject goods have been availed by the exporter and the same was subjected to necessary verification. Only such complete and verified information is considered for determination of cost of production of the subject goods produced by HCC.

a. <u>Determination of Normal Value</u>

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

> *(i) the comparable price, in the ordinary course of trade, for the like article when meant 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 or 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.*

39. Paragraph-7 of the Annexure-1 to the Anti-dumping Rules provides as follows:

"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or 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 selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments"

40. According to these Rules, the normal value in NME countries (China in the present case) can be determined on any of the following basis:

a) On the basis of the price in a market economy third country, or
b) The constructed value in a market economy third country, or
c) The price from such a third country to other countries, including India.
d) If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.

i. <u>China PR</u>

41. The Authority notes that none of the producers/exporters from China PR, who have exported the subject goods to India during the POI, have responded in the form and manner prescribed. Thus, none of the producer/exports in the present investigation from China PR could be found to be operating under market economy condition for determination of normal value in terms of Para-6 of Annexure-1 to the Rules. Under this circumstance, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules to the Chinese producers/exporters and the Authority has to proceed in accordance with Para 7 of Annexure - I to the Rules supra.

42. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies

have made any claim with regard to an appropriate market economy third country. Therefore, the Authority proceeds to construct the normal value based on any other reasonable basis.

43. The Authority determines the Normal Value for China PR on best available facts basis in terms of second proviso of Para 7 of Annexure 1 to the AD Rules. Accordingly, the Normal Value of the product under consideration has been determined based on the international price of the major raw material, consumption norms of the petitioner, duly adjusted to include selling, general & administrative costs and profits. The normal value so determined is *** US$/KG

ii. <u>Japan</u>

44. The Authority notes that none of the producers/exporters from Japan has responded to the Authority in the present investigation. In view of the same, the Authority has determined the Normal Value based on the international price of the major raw material, consumption norms of the petitioner, duly adjusted to include selling, general & administrative costs and profits. which is *** US$/KG

iii. <u>Korea RP</u>

45. The Authority notes that EQ Responses has been filed by two producers from Korea RP namely M/s BASF Company Ltd and M/s Hanwha Chemical Corporation.

a) <u>BASF Company Ltd</u>

46. The authority notes that BASF Company Ltd ("BASF") has submitted the exporters' Questionnaire response claiming to be a producer cum exporter of subject goods and informed that it has exported the subject goods directly to India. The authority notes that BASF has submitted details about domestic sales in Appendix-1.

47. To determine the normal value, the authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of subject goods. If profit making transactions are more than 80%, then the authority has considered all the transactions in the domestic market for the determination of the normal value and in cases, where profitable transactions are less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value. It was also noted that the loss making transactions were more than 20% of the total domestic sales. Therefore, the Authority has proceeded to determine the normal value based only on the profitable sales in terms of the provisions of Annexure I of the AD Rules.

48. M/s BASF has claimed adjustment on account of rebate, inland freight and packing cost. The authority has accepted all the adjustments with due verification for the purpose this final finding. Accordingly, normal value is determined is *** US$/KG

b) Hanwha Chemical Corporation (HCC)

49. The Authority notes that Hanwha Chemical Corporation ("HCC") has submitted the Exporters' Questionnaire response claiming to be a producer of the subject goods in Korea RP and informed that it has exported the subject goods to India indirectly through unrelated exporters/traders. It has also been submitted by HCC that the company has exported the PUC to India thorough three exporters/traders and they have filed EQ Responses along with HCC.

50. The response filed by HCC has been examined for the purpose of determination of normal value concerning HCC. It is noted that HCC produces main raw materials namely TDA and also CDC as intermediates. The cost of such intermediates captively produced by them has been examined in detail and fair cost of the subject goods produced by HCC has been determined accordingly and the same is used for the purpose of OCT tests. It is noted that 86% of the sales was loss making and hence the normal value is determined based on the profitable sales. Accordingly, the Authority has determined the normal value is *** US$/KG.

c) Normal Value for other producers and exporters in Korea RP

51. The Authority notes that no other producers/exporters from Korea RP have responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Korea RP, the Authority has considered the normal value of the cooperative exporter and the same is *** US$/KG.

b. Determination of Export Price

i. China PR

52. The Authority notes that none of the producer/exporter from China PR, have responded to the Authority in the present investigation. In view of the non-cooperation, the Authority has determined net export price for all producers/exporters on the basis of DGCI&S import data with due adjustments as claimed by the petitioner and the same is *** US$/KG.

ii. Japan

53. The Authority notes that none of the producer/exporter from Japan, have responded to the Authority in the present investigation. In view of the non-cooperation, the Authority has determined net export price for all producers/exporters on the basis of DGCI&S import data with due adjustments as claimed by the petitioner and the same is *** US$/KG.

iii. Korea RP

54. The Authority notes that EQ Responses has been filed by two producers from Korea RP namely M/s BASF Company Ltd and M/s Hanwha Chemical Corporation. While it has been submitted by BASF Company Ltd that they have exported the PUC directly to India, however, it has been submitted by Hanwha Chemical Corporation that they have exported the subject goods through unrelated exports/traders M/s PP and Y International Co. Ltd, M/s IMS Corporation, M/s TAJ AL Mulook General Trading LLC and M/s Everlite Korea Co., Ltd has filed their EQ Responses and are cooperating with the Authority.

55. Exporters namely M/s PP and Y International Co. Ltd, M/s IMS Corporation and M/s Everlite Korea Co., Ltd has filed their EQ Response and claimed that they have exported the subject goods produced by M/s Hanwha Chemical Corporation to India during the POI.

56. EQ Response have also been filed by M/s TAJ AL Mulook General Trading LLC, a UAE based Trading Company, claiming that they have exported the subject goods produced by M/s Hanwha Fine Chemical Corporation through Korean exporter namely M/s PP and Y International Co. Ltd.

a) BASF Company Ltd

57. The Authority notes from the EQ Response filed by BASF Company Ltd that BASF Company Ltd has exported the subject goods to India during the POI directly. BASF have reported a total export of 11340 MT in their Appendix-2 and claimed adjustments on account of inland freight, ocean freight, insurance and bank charges and same have been allowed. Accordingly, the net export price determined as *** US$/KG

b) M/s Hanwha Chemical Corporation (Producer) and M/s PP and Y International Co. Ltd (Exporter)

58. The Authority notes that EQ Response has been filed by M/s PP and Y International Co. Ltd claiming themselves as an Exporter of subject goods from Korea RP of the subject goods produced by M/s Hanwha Chemical Corporation. Appendix-2 filed by M/s PP and Y International Co. Ltd shows that they have exported 2200 MT of subject goods produced by Hanwha Chemical Corporation to India during the POI. PP and Y

International Co. Ltd has claimed adjustments on account of inland freight, ocean freight, insurance and bank charges and same have been allowed. Accordingly, the weighted average net export price has been determined as *** US$/KG.

c) M/s Hanwha Chemical Corporation (Producer) and M/s IMS Corporation (Exporter)

59. The Authority notes that EQ Response has been filed by M/s IMS Corporation claiming themselves as an Exporter of subject goods from Korea RP of the subject goods produced by M/s Hanwha Chemical Corporation. Appendix-2 filed by IMS Corporation shows that they have exported 560 MT of subject goods produced by Hanwha Chemical Corporation to India during the POI. IMS Corporation has claimed adjustments on account of inland freight, ocean freight, insurance and bank charges and same have been allowed. Accordingly, the net export price has been determined as *** US$/KG.

d) M/s Hanwha Chemical Corporation (Producer) and M/s Everlite Korea Co., Ltd (Exporter)

60. The Authority notes that EQ Response has been filed by M/s Everlite Korea Co., Ltd claiming themselves as an Exporter of subject goods from Korea RP of the subject goods produced by M/s Hanwha Chemical Corporation. Appendix-2 filed by M/s Everlite Korea Co., Ltd shows that they have exported 180 MT of subject goods produced by Hanwha Chemical Corporation to India during the POI. M/s Everlite Korea Co., Ltd has claimed adjustments on account of inland freight, ocean freight, insurance and bank charges and same have been allowed. Accordingly, the net export price has been determined as *** US$/KG

e) M/s Hanwha Chemical Corporation (Producer), M/s PP and Y International Co. Ltd (Exporter) and M/s TAJ AL Mulook General Trading LLC, UAE (Trader).

61. The Authority notes that EQ Response has been filed by M/s TAJ AL Mulook General Trading LLC. M/s TAJ AL Mulook General Trading LLC have claimed that they are a trading company based in UAE and have Exported the subject goods produced by M/s Hanwha Chemical Corporation to India during the POI through the exporter from Korea RP namely PP and Y International Co. Ltd. Appendix-2 filed by M/s TAJ AL Mulook General Trading LLC shows that they have exported 1000 MT of subject goods produced by Hanwha Fine Chemical Corporation to India during the POI. During the course of verification, they could not provide the complete chain of supply up to the Indian customer. In view of this export price of the trader through M/s PP and Y International could not be determined.

f) Export Price for non-cooperating producers and exporters from Korea RP

62. The Authority notes that no other producer/exporter from Korea RP have responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Korea RP, the Authority has determined the net export price on the basis of export price of a cooperative exporter and the same is *** US$/KG.

c. Determination of Dumping Margin

63. Based on normal value and export price determined as above, the dumping margin for producers/exporters from subject countries has been determined by the Authority and the same is as follows;

S.No	Country	Producer	Exporter	Normal Value - US$/Kg	Export price - US$/Kg	Dumping Margin - US$/Kg	Dumping Margin - %	Dumping Margin Range- %
1	China PR	Any	Any	***	***	***	***	15-25
2	Japan	Any	Any	***	***	***	***	5-15
3	Korea RP	Hanwha Chemical Corporation	PP and Y International Co. Ltd	***	***	***	***	10- 20
4	Korea RP	Hanwha Chemical Corporation	Everlite Korea Co., Ltd	***	***	***	***	5-15
5	Korea RP	Hanwha Chemical Corporation	IMS Corporation	***	***	***	***	5-15
6	Korea RP	Hanwha Chemical Corporation	PP and Y International Co. Ltd, Everlite Korea Co.,	***	***	***	***	10-20

			Ltd IMS Corporation					
7	Korea RP	BASF Company Ltd	BASF Company Ltd	***	***	***	***	20-30
8	Korea RP	Any other than the producers at S.No 3 to 7 above.	Any other than the exporters at S.No 3 to 7 above.	***	***	***	***	30-40

G. Injury Determination

G.1 Injury Examination

Views of Exporters, Importers, Consumers and other Interested Parties

i. The pricing of the subject goods in Indian market is comparable with other suppliers of the same product such as GNFC, which is the major local player.

ii. Imposition of duty may lead to monopoly as GNFC is the sole producer and it will restrict the availability of the material to Indian buyers.

iii. Imposition of duties may lead to demand supply gap India. Indian industry cannot supply to the 100% demand. Local manufacturers of downstream products will suffer if anti-dumping duties are imposed.

iv. Certain unique situation in this case are sudden and substantial capacity expansion by the Petitioner, plant shut-down of the petitioner in 2014 and selection of POI merits reconsideration. These factors should be considered in the context of injury claimed.

v. In the year 2013-14, the installed capacity of the Petitioner was 14000 MT. In the year 2014-15, this installed capacity was increased 4-5 times, to 64000 MT. There is a substantial gestation period for achieving break-even profits and even for achieving normalcy and stabilizing capacity utilization. In such a case, the Petitioner's claim of injury for the following year, i.e., 2015-16, is premature, unwarranted and completely misleading. The Petitioner's fixed costs also increased in the year 2014-15 and 2015-16 (POI) period.

vi. The Petitioner has conveniently withheld the fact that their plant remained shut down in 2014, from January when there was a fatal gas leak on the plant premises up to November. Injury was also suffered by the plant owing to this shut-down for an entire year. The Petitioner has been slow to recover from the same and to regain its capacity utilization.

vii. The POI is an odd-period, during which the losses of the Petitioner are clearly inflated. The Petitioner in its Annual Report for 2015-16 (POI) admits that the POI was a unique year, which experienced low TDI prices due to increased global capacities.

viii. It is clear that while prices of subject goods from subject countries remained steady throughout the period of injury, they declined only in the POI, admittedly due to the global overcapacity. However, the price in the period post-POI has increased substantially, before the imposition of any provisional duties. The Authority should have considered such unique factors prior to issue of its Preliminary Findings and a more recent period of investigation should have been selected.

ix. During 2014 wherein there was plant shut down, the Petitioner's capacity utilization has been critically low at 37.09%. The Petitioner does not attribute its injury to this factor, but simply blames imports for its losses.

x. International prices of raw material have not been provided / considered at all. In fact, over the period of Injury and up to the POI, the prices of TDI have fallen consistently, globally. Thereafter, the prices of TDI have increased.

xi. There is no mention of a non-injurious price ("NIP") and no calculation thereof to support the allegation of price underselling and suppression which has been claimed. Even the Authority has not shared the methodology for determination of NIP nor the trend of NIP for the Petitioner.

xii. The sudden and substantial capacity expansion of the Petitioner of about 4-5 times original capacity in the base year, coupled with a complete years' shutdown in 2014 has led to decreased profitability. The same is also responsible for increased interest and depreciation costs, evidenced in the Petitioner's own data, which has increased the petitioner's losses.

xiii. There is no increase in volume of dumped imports in relation to production or consumption in India and neither has the Petitioner made such a claim. Thus, there is neither absolute growth (considering special circumstances and growth in demand) nor any relative increase in import volumes.

xiv. The demand for the product has shown significant growth. The trend of imports from the subject countries clearly shows a declining trend. Thus, the subject countries have lost market share, in the face of growing demand, from almost 60.76% in 2012-13 to 49.87% in the POI. The indexed trend shows absolute growth of a mere 7 indexed units compared to the DI growth of 89

indexed units. Moreover, the growth in market demand has been effectively captured by the Petitioner, whose share has increased from a meagre 34.32% in 2012-13 to a substantial 50% in the POI.

xv. The increase in the imports from the subject countries is merely 6.70% over the base year, which amount to only 3.13% of the overall increase in demand. Demand increased by about 30%. This entire quantum of increase in demand has been taken over by the Petitioner, except for 3% attributable to the imports. In absolute terms, imports from subject countries have increased by 2018 MT between 2012-13 and POI, whereas the Demand has increased by 14867 MT in the same time period. It is evident that Imports have decreased in relation to production of the domestic industry.

xvi. There is no price undercutting throughout the period of injury for all the subject countries. Contrary to the claims of the petitioner, there is no price suppression/ depression or price underselling. This is because the Petitioner's costs are inflated due to inherent reasons. In any case, where prices of a product are falling globally, the decreased price of imports cannot be said to be "unfair" or "dumped".

xvii. For the purposes of analysing injury based on economic parameters of the Petitioner, price underselling is not a relevant criterion. In the case of Nirma Ltd. v. Union of India [Special Civil Applications No.16426/2016 & 16427/2016], the Gujarat High Court clarified that the determination of underselling would only be relevant once injury had been established, based on other economic parameters.

xviii. The Authority's consideration of "price underselling" as a factor in determination of injury is unjustified. The Authority may duly rectify this error prior to issue of any Final Findings.

xix. For analysing price suppression / depression, the Authority is required to determine a Non Injurious Price (NIP) for the Petitioner. Determination of the NIP, should factor in factual situation of the Petitioner such as increased cost of production of the Petitioner due to capacity expansion, losses due to plant shutdown for a year and decreased global prices has led to an inflated NIP. Even an examination of the Petitioner's export prices would have been reflective of the reasonable non-injurious price for the DI.

xx. The construction of the NIP must disregard the exceptional costs, if any, incurred by the Petitioner. Only the cost of efficient production must be considered in the NIP. In the present case, the excessive overheads incurred towards sudden and substantial capacity expansion, the losses because plant shutdown and resultant inactivity as well as the losses because of global price decline have been erroneously factored into the Petitioner's NIP.

xxi. Contrary to the Petitioner's claims that selling prices had to be lowered despite increasing cost of production, the cost of production of TDI decreased in the subject period. It is the costs of production of the Petitioner which are unnaturally increasing, despite falling TDI prices. In fact, the global prices of TDI fell, not just in the Indian market but across Asia. In addition to this, the Petitioner itself has admitted, in its Annual Report for 2015-16 (POI) that the POI was a unique year, which experienced low TDI prices due to increased global capacities.

xxii. The Production, Capacity, Capacity Utilization and Sales figures show growth. The profitability of the Petitioner is affected by the capacity expansion and plant shut down in 2014. The wages and productivity of the Petitioner has increased-even though some injury is exhibited, by the Petitioner, pertaining to these factors.

xxiii. The injury by the parameters of wages and productivity is not attributable to the imports from the subject countries. The low return on investments is clearly attributable to the high interest and depreciation. These factors are, in turn, attributable to the capacity expansion and plant shut down.

xxiv. The Petitioner claims injury by virtue of increased inventories. However, the increase in inventories is directly correlated to the increase in sales volume of the Petitioner. The Authority must rely on the principles laid down by the CESTAT in Bridgestone Tyre Manf. v. Designated Authority, while considering the correlation between inventories and sales of the Petitioner in which it was stated that "Compared to increase in sales volume, the level of inventory has almost remained the same percentage-wise and this cannot therefore be straightaway considered to be an injury indicator."

xxv. With respect to the Capital Employed, an analysis of the Capital Employed and Return on Capital Employed must necessarily consider the costs of interest and depreciation of the Petitioner. It is submitted that the injury to the Petitioner is caused by the continuously increasing interest and depreciation costs, which are a result of the capacity expansion of 4-5 times the original capacity.

xxvi. The increased losses and negative cash flow squarely coincide with relevant facts of capacity expansion in a sudden and substantial manner coupled with the plant shutdown in 2014.

xxvii. The sudden and substantial capacity expansion, the plant shutdown for 2014 and the global decline in prices of TDI are factors that are clearly affecting the Domestic prices.

xxviii. It is highly suspect that wages per unit have almost doubled over the period of four years. This is a factor in the increasing cost of production of the

Petitioner, a factor that is in no way attributable to imports from the subject countries.

xxix. Further, the number of employees has grown 4.5 times, which is commensurate to capacity expansion, but not commensurate to the actual production figures of the Petitioner. The cost of a larger workforce, without balanced increase in production, is the reason for the injury being suffered by the Petitioner.

xxx. It is crucial to note that while the overall productivity increased 2.5 times, in response to capacity increase and workforce expansion of 4.5 times, the per employee productivity actually halved. Thus, the capacity expansion and the resultant workforce expansion without commensurate growth in production / productivity have taken a toll on the profits of the petitioner.

xxxi. The Authority has made no such "further" specific findings regarding the necessity of application of provisional duties. The present Preliminary Findings do not allow for imposition of any provisional duties.

xxxii. The Authority may duly consider the normalized and stabilized TDI prices in the post-POI period for calculation of duty margins qua BASF. The post-POI data shows a very different situation since the price of the product has increased globally. This fact itself establishes that the POI as selected by the Petitioner is anomalous.

xxxiii. The domestic industry has not provided positive evidence that it has been materially injured due to alleged dumped imports from the subject countries.

xxxiv. There was no significant increase in volume of dumped imports either in absolute terms or relative to production and domestic consumption/demand. Also, recording of the factual position in this respect in the provisional finding does not appear correct. It can be seen that there is no significant increase in imports in the current investigation as required under the provisions of para (ii) of Annexure II and the current investigation may please be terminated on this ground alone.

xxxv. In determining price effects, the imports from subject countries ought to have explanatory force for the occurrence of the significant price effect for the domestic industry. The WTO Appellate Body in China-Grain Oriented Flat-Rolled Electrical Steel from US has found that the domestic industry is required to provide reasons as to how the pricing trends played a role in affecting the domestic prices. There is no price undercutting as per the PF that the landed values of the imports are higher than the domestic prices of the subject goods.

xxxvi. With regard to price underselling, it is submitted that it is not a factor of injury to be examined and analysed as part of the price effect of subject imports on the domestic prices as may be seen from Para (ii) of Annexure II.

xxxvii. There is no analysis as to how the prices of the domestic industry declined more than the decline in the landed values of the imports. Also what are the reasons for increase in the cost for the domestic industry when the prices of major raw materials, such as Toluene and Nitric Acid, declined over the injury investigation period is also need to be examined. The decline in domestic prices could well be explained and linked to the significant decline in raw material prices.

xxxviii. The domestic industry is required to demonstrate that the reduction in the domestic prices is attributable and due to the effect of dumped imports. However, this is totally absent in the current investigation.

xxxix. The cost of depreciation, interest and wages has substantially increased by 153%, 1541% and 373% respectively over Injury Investigation Period. Therefore, the reasons for the increase in the cost of the domestic industry for the subject goods are the increase in the cost of depreciation, interest, wages and overheads as a result of increase in the capacity of the domestic industry by 50000 MT. Therefore, there is no such case of price prevention in the current case as well, as alleged by the domestic industry

xl. There has been significant increase in sales, market share, capacity, production, no. of employees, wages, capacity utilization etc. which shows no injury. Also, there is only very minimal increase in average inventory. The productivity per employee in the current investigation has significantly come down by more than 44% over the injury investigation resulting into increase in cost and injury to the domestic industry but not the dumped imports.

xli. Profitability, cash flow and return on investment suffered because of higher cost due to other factors. Also, the ability of the domestic industry to raise capital for investment is not affected. Thus, the economic factors of the domestic industry have shown improvement and for the factors that have shown to be negatively impacted are not due to the imports from the subject countries but are affected due to other factors.

xlii. Demand of the subject goods has witnessed around 30% increase in the period of investigation when compared to the base year. However, said increase is very minimal when compared to the corresponding increase in the production and sales of the domestic industry during the same period.

xliii. The production of the domestic industry has increased from 17,845 MT in the base year to 45,680 MT in the POI, a huge increase of around 250%. It is evident that the production of the domestic industry has improved gigantically from base year to the POI. The said increase is even more significant in view of the fact that in the base year the domestic industry was operating at above par capacity of around 128%.

xliv. The growth in terms of production and sales has been tremendous. The domestic industry has achieved highest sales volume in domestic market during the POI. Thus, there is no adverse impact on this factor because of the alleged dumped imports.

xlv. As per the preliminary findings, the market share of the Domestic industry has increased from 34% in the base year to around 50% during the POI. On the other hand, the market share from subject countries has reduced from 61% in the base year to 49.87% during the period of investigation. The annual report of the domestic industry clearly shows that they held 54% market share during the FY 2015-16.

xlvi. Since the domestic industry has increased its capacity massively by around 460% in 2014-2015, any expectation of higher capacity utilization within a short period of one year would be not only unrealistic but absurd as well. The annual report of the domestic industry also makes it clear that the lower capacity utilization of the domestic industry was on account of the unstabilized operations in 'Dahej' plant and not on account of allegedly dumped imports thus there were no adverse effects on these factors as claimed by the domestic industry.

xlvii. Total market share of Imports from subject countries with respect to demand decreased from 61% during the base year to 49.87% during the period of investigation. Despite of 30% increase in the total demand of the subject good in the country, the volume and market share of the imports from the subject countries has fallen substantially during the injury period.

xlviii. The share of the allegedly dumped imports in relation to production of the domestic industry decreased substantially from 168% during the base year to 70% during the period of investigation. There is a fall of 98% in comparable terms.

xlix. The Annual Report of the domestic industry also makes it abundantly clear that during the injury analysis period they have worked without proper technological know how's which have caused them huge losses courtesy to "destabilized" 'Dahej' plant and repeated accidents, failures and seizures. Therefore the respondents reiterate that the losses caused to the domestic industry on account of factors other than 'dumped imports' cannot be attributed to the imports of the subject goods.

l. The annual report of the domestic industry clearly shows that the company as a whole, but for the 'Dahej' plant has earned huge profits. It has already been established that said 'Dahej' plant incurred losses on account of the admitted inefficiencies and incapability of the domestic industry itself.

li. The increase in cost of production and injury was not a natural phenomenon but an artificial situation created by domestic industry's own inefficiency and not on account of the allegedly dumped imports.

lii. It has been submitted by the domestic industry that the drop in prices of the product under consideration has been on account of dumped imports from the subject countries. However, they themselves have admitted in their annual report of 2015-16 (POI in the present investigations) that the fall in TDI prices was a global phenomenon and happened due to capacity expansions worldwide.

liii. There has been significant increase of 156% in the productivity per day of the domestic industry. The figures relating to employment increase by a whopping 359% in the period of investigation as compared to the base year. Wages increased by 108 % in 2014-15 and 85% during the period of investigation. These parameters show very robust performance as far as wages are concerned. The annual report of 2014-15 of the company also shows that there has been an exceptionally high increase in the salaries and wages.

liv. The domestic industry's losses are on account of unprecedented increase in wages which ought to be adjusted appropriately in injury analysis as well as for the calculation of cost/NIP.

lv. The fall in the prices of the subject goods is on account of the fall in Toluene prices. The fall in prices in percentage term is almost equal for both toluene as well as the subject goods. The primary reason for the fall in the prices of the subject goods was fall in the toluene prices and not dumping as alleged by the domestic industry.

lvi. The DI, in its unaudited Financial Reports has reported that losses from TDI, Dahej unit have reduced so substantially that, overall, substantial profit has been achieved in Q1 of FY2016-17 as opposed to losses in Q1 2015-16.

64. Following are the injury related submissions made by the domestic industry in brief;

i. The injury information provided in the petition shows that although volume parameters such as capacity, production and sales showed a positive trend in a plain reading, a number of other indicators such as capacity utilization, market share, inventory levels etc. showed a situation of injury.

ii. The Indian market was dominated by dumped imports by holding more than 50% market share in the domestic demand which is very significant and a level enough to render the position of domestic industry seriously vulnerable to such dumped imports.

iii. Key parameters relating to the financial situation of the domestic industry, namely profitability, cash profit, ROCE etc turned out to be significantly negative during the POI from a positive situation earlier and, in fact, factors such as return on capital employed, growth etc showed a seriously grave material injury situation.

iv. In fact the domestic industry has faced huge financial losses on account of aggressive dumping adopted by producers/exporter from subject countries in the injury period except two base years.

v. The domestic industry has been selling the subject goods below its cost of production since the dumped imports were present at a price less than its cost of production seriously injuring the rights of the domestic industry to realize a remunerative price for the subject goods produced by it.

vi. The dumped imports were suppressing the domestic prices and serious positive price underselling effects were also evident during the POI. Price undercutting may not be a factor showing injury in this case since the prices are already suppressed and the domestic industry has been selling at a price below its cost. Hence, the question of matching the landed by does not arise and are illogical.

vii. The inventory levels of the domestic industry substantially increased which shows clear signs of injury. The increase in production needs to be seen in light of the increase in inventory which signifies the fact that the domestic industry has been prevented from selling more in the market by the dumped imports.

viii. An objective and holistic evaluation of various economic parameters clearly demonstrates that dumped imports from subject countries have caused material injury to the domestic industry. The price effect of the dumped imports has been significant on the basis of price suppression and price underselling and as a result of which profitability of the domestic industry has deteriorated and situation of the domestic turned out to be loss making after two initial years in the injury period, thus, the domestic industry has suffered material injury.

ix. Even the performance of the domestic industry in terms of volume parameters are also under serious pressure since the capacity utilization have declined and also remained at below par levels while inventory level of the

domestic industry have increased and more than 50% of the market share has been held by dumped imports.

x. In fact, the marginal growth in production and sale has been negated by the overall losses faced by the domestic industry on account of serious price competition from dumped imports. Domestic industry was forced to sell at a price which has not been remunerative and, in fact, below its cost of production. The domestic industry has, thus, suffered material injury and the injury has been caused on account of dumping from subject countries.

xi. It has been submitted by Covestro (Hong Kong) Limited that their pricing is comparable to that of other suppliers including GNFC. The statement has no legal or factual basis and there is no EQ Response filed by Covestro to substantiate their claims.

xii. It has been alleged by Covestro that imposition of duty may lead to monopoly as GNFC is the sole producer and it will restrict the availability of the material to Indian buyers. The argument has no legal basis. GNFC is the sole producer of subject goods in India which makes it necessary to protect this company from dumping, else the domestic market will be dominated by foreign players leaving no room for the domestic industry. Also, legally, there is no bar on sole producer to seek protection from dumping. Duties do not ban imports. Imports can be still made but at non dumped prices.

xiii. It has been alleged by Covestro that imposition of duties may lead to demand supply gap India. The claim has no basis. AD duties are not against imports per se. It would help to remove the injurious effect of dumping. Demand supply gap, if any, does not disqualify a domestic industry from seeking protection against dumping. This Authority has subjected this issue to examination in plethora of investigations and it was consistently found that demand supply gap, if any, is not a reason to permit dumping.

xiv. The three unique factual situation pointed out by certain opposing parties do not establish that the injury caused to the domestic industry are not because of dumping from subject countries. Capacity expansion was as per the demand in India. Any alleged plant shut downs in 2014 cannot be the cause of injury in 2015-16. Also, the admitted global excess capacity was apparently one of the parameters which triggered dumping and consequent injury.

xv. The contention that sudden and substantial capacity expansion by the petitioner is the cause of injury is devoid of any merit. The capacity expansions were carried out looking at the robust demand for the product in the country, thus, the DI did not err in carrying out any capacity expansions. However, what has caused injury to the domestic industry is the fact that the exporters got rattled with the capacity additions carried out by GNFC and to keep GNFC away from the market, the exporters resorted to dumping which was very aggressive in the POI.

xvi. The landed prices of imports were significantly reduced by the POI and such imports were at dumped rates. GNFC was in profit during the base year and the year after that. Any initial glitches of a new plant were at the best noticed at times in 2014-15 and the plant was in normal operation during the POI which is evident in the production and capacity utilisation during the POI. Also, the increase in fixed costs needs to be seen in light of the low capacity utilisation. In any case, NIP is determined based on Annexure III and any alleged effect of higher fixed costs is liable to be nor mated and the petitioner will not get any undue advantage of any such alleged higher costs, if any. Thus, capacity expansion per se was not the cause of any injury and other apprehensions of parties viz. fixed costs are also not of any merit.

xvii. The contention that shutdowns in the new plant during 2014 are the cause of injury is not correct. The operation was normal during the POI and the utilisation was about 71% in POI. DI could have produced much more had there been no dumping. It is also needs to be noted that GNFC was making profits in the initial two years of injury period and faced highest losses during the POI and this was the period wherein the landed price of imports were the lowest coincided with positive dumping margin. In fact, the producer/exporters who were under pressure due to global excess capacities of TDI reduced their prices further and resorted to aggressive dumping in Indian market when the DI in India increased its capacity to the level of Indian demand and the attempt of the exporters were to hold on to the market share in India. As a result of such dumping, the domestic industry suffered injury.

xviii. It has been contended that selection of POI merits reconsideration which is not of any merit. The DI suffered material injury during the POI considered in the present investigation on account of dumping of subject goods from subject countries and the same is supported by facts which means there are no basis to the argument that the POI merits reconsideration.

xix. Certain opposing parties have admitted that the prices of TDI declined in the POI due to global over capacities. This establishes that the

producers/exporters from subject countries also were under pressure to dispose of its capacities and resultantly they chose Indian market as the target to dump the material as the demand in India have been robust. Had there been no capacity expansion undertaken by GNFC, they would not have reduced the prices to such low levels. When GNFC increased its capacity in line with Indian demand, the exporters from subject countries who were under pressure of excess capacity resorted to aggressive dumping so that they could maintain their market share in the Indian market and keep GNFC away from the market.

xx. Dumping is evident from cooperating parties and others. Injury is evident. A causal link is also very evident that AD duties must be imposed on imports of TDI from subject countries and PF should be confirmed at the time of final findings.

xxi. The dumped prices of imports prevented the DI from realising profitable prices in the market. DI was in profit earlier and what triggered the losses during the POI have been the dumped prices offered by the exporters. Significant reduction in prices from subject countries from a level of Rs166/ Per KG in the base year to Rs 113/Per KG in the POI is very evident of the situation that how such prices caused price suppression and depression effects and also losses eventually. The DI was not even able to recover its costs of production in view of the presence of dumped material in the market during the POI.

xxii. The imports from subject countries have increased in absolute terms by the POI viz. the base year. The DI has also shown increases in some of the volume parameters by the POI especially with the help of capacity additions executed in the year 2014-15 looking at the robust demand for the product in India though the DI could have done better in terms of volume parameters also had there been no dumping. But the DI was restrained from gaining the benefit of any volume increases on price front also as the prices were suppressed and depressed by dumped imports.

xxiii. The increases in certain volume parameters could not be converted into overall positive situation for the DI in terms of price parameters as well because of dumping. Thus, looking at volume increase on a standalone basis would only give an incorrect picture of injury. During the POI, about 50% of the market share was still held by dumped imports and such levels are significant and the effect of such level is reflected in the pricing adversities of the DI.

xxiv. Mere reduction in share of dumped imports over the base year wherein the DI had only limited capacity is not a factor which suggests such imports have no consequences on the DI. Thus, the situation of the DI was that certain volume parameters have shown some increases by the POI without any corresponding increase on price parameters that it cannot be said that the DI did not suffer any injury. Even the performance of the volume parameters was below par as the capacity utilisation was only 71% in the POI and there were increases in the inventory during the same period. Had there been no dumping, volume parameters also would have shown much better position.

xxv. It is not true that the DI's cost is inflated. The NIP is determined as per the principles of Annexure III by the Authority and there is no basis in the argument that the petitioner did not disclose NIP or its trend in the petition.

xxvi. The injurious effect of dumping is clearly evident in the following parameters in brief;

a) Imports increased in absolute terms and stood at about 50% of the Indian consumption which was significant enough to distort the market for DI;

b) The DI's capacity utilisation was only 71% during the POI and such below par capacity utilisation was when the product marked a robust growth in demand consistently that the production and capacity utilisation of the DI was impacted because of dumping;

c) The inventories with the DI increased in the POI. Had there been no dumping, inventories would not have piled up and the DI would have produced more;

d) DI suffered financial losses in the POI whereas the DI was operating in profits in the initial 2 years of the injury period;

e) Price depression and suppression of a serious nature is evident in the POI;

f) Price underselling is positive showing that the DI was not achieving fair price for its product;

g) ROI has turned into negative from a positive situation;

h) Price undercutting though negative on paper cannot be seen as the core parameter considering the prices effects otherwise as above;

i) Growth have been negative on various parameters;

j) Dumping margin have been significantly positive from subject countries and also from responding exporters;

k) The above points clearly show that the DI suffered volume and price injury and the injury was caused by dumping of subject goods from subject countries.

xxvii. With regard to the contentions on wages and employment situation of the DI, the level of employment and wages paid to the employees has increased in line with increase in capacity/production and also as per the labour law of the land. The productivity of the company per day has shown improvements. It has been contended that the wages per kg have almost doubled. The wages are as per the audited records of the company. Wage increases as required under the law from time to time have been carried out by the company to the extent feasible. However, maintaining the employment level and wage increases in the future shall depend upon the fair situation of subject goods in the market by way of ADD.

xxviii. It is an unsubstantiated contention that the level of employment has not been commensurate to the production and the DI suffered because of excess wages and such employment level has impacted the profitability. The level of employment was commensurate with the number of employees required including skilled and unskilled employees to execute the production of the product. The number of employees increased significantly for the first time in 2014-15 with the capacity addition and the same was at comparable levels in the POI. The level of employment or wages per se did not cause any losses but it is the unfair competition from dumped imports which have caused losses to the DI. What has restrained production commensurate to capacity set up by the DI is the presence of dumped imports and any adverse situation on account of low production is also attributable to dumping and cannot be seen separately.

xxix. It has been contended by certain opposing parties that there have not been any adverse impacts on production and sale of the DI. In a plain reading, it may appear that the production and sale have increased over the base year. But it is relevant to note that the DI could utilise its capacity to the level of 71% only during the POI and what has been produced and sold by the DI in the POI was not the best it could do. The production and sale was not line with the demand in the country as dumping prevented it from selling more at a profitable rate. Thus, production and sale of DI was adversely impacted because of dumping from subject countries.

xxx. The demand and market share relevant for the present investigation is what determined by the Authority as per its practice and what is reported in the annual report is as per the estimates of the company.

xxxi. The share of imports from subject countries in Indian demand was very significant in the POI and the DI could not have realised any profitable price in the presence of such dumped imports. Thus, a decline in share of dumped imports over the base year alone is not sufficient to say market share of dumped imports were not of any adverse effects. The actual impact of the market share of dumped imports is apparent in the significant share of such imports during the POI (about 50%) and such significant share was achieved by the exporters by resorting to aggressive dumping. The market share of the DI was adversely affected because of dumping. Also, though the capacity increased in line with the demand, the Capacity Utilisation during the POI was only 71% which is a below par level and what has caused such low utilisation has been the presence of huge volume of dumped imports from subject countries.

xxxii. The new plant was fully operational in the POI and the DI could achieve only 71% of capacity utilisation which was due to presence of dumped material in India. Had there been no dumping, the DI would have produced more and sold more. When the demand situation was conducive for more production, the DI ended up in significant level of inventories and below par Capacity Utilisation (CU) as a result of dumping.

xxxiii. It has been contended that there hasn't been any impact of imports from subject countries on the domestic prices and the cost of depreciation, interest and wages of the DI has substantially increased. The claims are not true. Price undercutting has been negative on paper as ultimately the imported products were cheaper to the consumers. However, price suppression, depression and also price underselling is very evident in the present case. It is also needs to be noted here that price undercutting cannot be seen as the core parameter of price injury here since the effects of price suppression and depression are very evident and the DI is forced to determine its prices as dictated by dumped imports and not in a free and uninfluenced manner. We place our reliance further on various recent investigations wherein the price undercutting has been negative such as Hot Rolled and Cold Rolled steels, Sodium Chlorate etc wherein a clear view has been taken that PU cannot be seen as the key parameter in cases where PU is negative and price suppression and depression have been evident. Also cost of depreciation, interest and wages of the DI has shown similar trend as that of increase in capacity and production. It cannot be said that the injury claimed in the POI are only on account of these factors and on the contrary it can be seen that the dumped prices have caused injury to the DI.

xxxiv. The contentions of the opposing parties on inventory levels are not true. The submission of such parties itself shows that average stock as percentage of production increased over the base year. Such increase in average stock cannot be termed as minor. And such a situation of inventory was created when the demand was robust and the DI was operating only at 71% capacity utilisation. Thus, the effects of dumping are evident on volume parameters as well.

xxxv. It has been contended that the productivity per employee in the current investigation has significantly come down by more than 44% over the injury investigation resulting into increase in cost and injury to the domestic industry. The observation is not true. Productivity per day is also important as the company cannot hire and fire its employees on a daily basis and the employment level as per the plant capacity is maintained. What has impacted the productivity per employee is the lower production triggered by dumping. Had there been no dumping, capacity utilisation and meaning there by production would have been higher which would have resulted in better productivity per employee as well. Thus, the deterioration in productivity per employee is also on account of dumping and not for any other reason.

xxxvi. It has been contended that adverse effects on profitability, cash flow and return on investment are on account of higher cost of the DI. The contention is not true. The DI was earlier making profits and these factors started to deteriorate and turned negative as a result of aggressive dumping of subject goods from subject countries since such prices were creating serious price suppression and depression effects among various other adverse effects.

xxxvii. The observations of the opposing parties on ability to raise capital investments are not correct. The investments were carried out by the DI two or three years back and such investments made are adversely impacted because of dumping. Thus, any additional capital requirements will have a concern should there be no AD duties against the menace of dumped imports of subject goods from subject countries.

xxxviii. The claims of opposing parties on the growth parameters as well as conclusions on injury are misleading. The growth have been negative on many parameters especially price parameters. The economic parameters have shown deterioration as a result of dumping which is reflected in below par capacity utilisation, increase in inventory, financial losses, price suppression and depression, negative ROCE etc.

xxxix. The observations of opposing parties on causal link and non-attribution analysis are unsubstantiated and misleading. There is dumping and injury in the present case and the facts have shown that the cause of injury is dumping of subject goods from subject countries. The various other parameters examined clearly shows that the cause of injury is not any such other factors. The claims of the exporter need to be dismissed accordingly.

xl. The argument of the opposing parties that the losses to the domestic industry in POI are due to increase in capacity by 357% is baseless. The exporters from subject countries resorted to aggressive dumping upon capacity expansion by DI and such aggressive dumping has caused injury to the DI. Had there been no dumping, DI would have just continued to operate in profit. The DI was in profits earlier.

EXAMINATION BY THE AUTHORITY

65. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

66. As regards the impact of the dumped imports on the domestic industry Rule 11 of AD Rules read with para (iv) of Annexure-II of the AD Rules states as follows.

> *"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural 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."*

67. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the opposing interested parties and also domestic industry. However, certain specific submissions made by the interested parties addressed by the Authority are as below;

68. With regard to the contention that the exporters' price is comparable to that of other suppliers including GNFC in the Indian market, it is noted that the statement do not disprove the claims of dumping and injury raised by the domestic industry and is seen as an unsubstantiated statement.

69. With regard to the contention that the applicant is the sole producer in India and any anti-dumping duties on PUC shall lead to monopoly, it is noted that the submission devoid of any merit legally and factually. Anti-dumping duties, if any, are imposed to correct the trade distorting effects of dumping and the Rules do not preclude a sole producer from seeking protection from dumping as per AD Rules,

70. With regard to the contention that the imposition of duties may lead to demand supply gap in India since the domestic industry may not be able to cater to 100% demand in India, the Authority notes that the AD duties if imposed are only to remove the injurious effect of dumping and do not envisage any protection beyond the lower of injury or dumping margin and it will not prevent imports per se and the consumers can still import but at an un-dumped price from subject countries.

71. With regard to the submissions of the opposing parties that the plant of GNFC have been facing shut down in 2014 and also in February, 2017, the Authority notes that such periods pointed out by the opposing parties are beyond the POI and it was neither substantiated with facts nor ascertained that the injury claimed during the POI are not on account of dumping of subject goods from subject countries and solely on account of any such alleged shutdowns. It has also been brought up by various opposing parties that the petitioner in its annual reports have admitted that the company faced stabilisation issues and also technical issues etc. and a detailed examination of such claims shows that the opposing parties could not establish that dumping was not the cause of injury and the injury claimed were on account of such other reasons.

72. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II (iv) of the Rules supra.

Cumulative Assessment

73. Article 3.3 of WTO agreement and Annexure II para (iii) of the Anti-dumping Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:

a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and

b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

74. The Authority notes in this respect that:

a) The subject goods are being dumped into India from the subject countries. The margins of dumping from each of the subject countries are more than the de minimis limits prescribed under the Rules.

b) The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.

c) Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the domestic industry in the Indian market.

75. In view of the above, the Authority considers that it would be appropriate to assess injury to the domestic industry cumulatively from exports of the subject goods from the subject countries.

G.ii. VOLUME EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC INDUSTRY

a. Demand and market share

76. Authority has defined, for the purpose of the present investigation and this final finding, demand or apparent consumption of the product in India as the sum of domestic sales of

like article by the Indian Producer and imports from all sources. The Authority has considered imports into India as per DGCI&S on transaction wise import data to determine the volume and value of imports of PUC into India from all sources. The demand so assessed is given in the table below.

i) Demand

Particulars	Unit	2012-13	2013-14	2014-15	POI
Demand	MT	49,531	51,168	57,121	64,398
Indexed	Trend	100	103	115	130
Imports from Subject Countries	MT	30,097	32,171	37,232	32,115
Imports from Other Countries	MT	2,438	1,983	1,319	122
Sales of Domestic Industry	MT	16,997	17,014	18,570	32,161

ii) Market Share of domestic industry and imports in Demand

77. Considering imports of subject goods from various sources and sales of subject goods of the Indian Producer, demand was determined and further market share of subject imports, domestic industry and other imports in such demand in India was also examined and the factual position in this respect is as follows;

Particulars	Unit	2012-13	2013-14	2014-15	POI
Sales of Domestic Industry	%	34.32	33.25	32.51	49.94
Imports from Subject Countries	%	60.76	62.87	65.18	49.87
Imports from Other Country	%	4.92	3.88	2.31	0.19

78. It is seen from the above tables that demand for the product in the country has shown positive growth over the injury period and throughout the POI. Any distortions in demand was, thus, not evident. The market share of the domestic industry which was in the range of 30 to 35% between base year and immediate previous year increased to 49.94% in the POI whereas that of imports from subject countries declined to 49.84% in the POI from a 60% level in the base year.

79. Thus, market share of domestic industry has increased over the injury period. Also, market share that of the subject countries stood at about 50% in the demand during the POI though declined over the base year.

b. <u>Import volume and market share of subject countries</u>

80. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. The volume of imports of the subject goods from the subject country has been analysed as under in this respect.

81. The Authority has examined the volume of imports of the subject goods as per the transaction wise import data provided by DGCI&S. On the basis of this import data on record, the import volume from each subject countries is found to be above the de-minimis levels. Imports volume from subject countries and other countries has been as under: -

Particulars		Unit	2012-13	2013-14	2014-15	POI
Volume	China PR	MT	5,729	6,738	8,572	6,724
	Japan	MT	8,017	9,190	12,322	8,913
	Korea RP	MT	16,351	16,243	16,339	16,479
	Subject Countries Total	MT	30,097	32,171	37,232	32,115
	Other countries	MT	2,438	1,983	1,319	122
	Total imports	MT	32,534	34,154	38,551	32,237

Market Share in Imports	China PR	%	17.61	19.73	22.23	20.86
	Japan	%	24.64	26.91	31.96	27.65
	Korea RP	%	50.26	47.56	42.38	51.12
	Subject Countries	%	92.51	94.19	96.58	99.62
	Other countries	%	7.49	5.81	3.42	0.38

82. The imports from subject countries which were 30097 MT in the base year increased to 32115 MT during the POI. Thus, the volume of imports from the subject countries increased in absolute terms.

83. It is noted that the imports of the subject goods into India were primarily taking place from subject countries. The share of imports from subject countries increased in absolute terms and it was more than 90% of the total imports into India throughout the injury period including the POI. In fact, imports from subject countries constituted about 99.62% of the total imports into India during the POI.

c. <u>Share of dumped imports in relation to production and consumption</u>

84. The relevant information concerning share of dumped imports in relation to production and consumption is seen as follows;

Particulars	Unit	2012-13	2013-14	2014-15	POI
Imports from Subject Countries	MT	30,097	32,171	37,232	32,115
Production of domestic industry	MT	17,875	16,317	23,737	45,680
Imports from subject countries in relation to production of domestic industry.	%	168.38	197.17	156.85	70.31
Imports from subject countries in relation to consumption in India	%	60.76	62.87	65.18	49.87

85. It is noted that though the imports from subject countries increased in absolute terms, the same declined in relation to production and consumption in India.

i. PRICE EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC INDUSTRY

86. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows:

> *"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."*

87. It has been examined whether there has been a significant price undercutting by the dumped imports of the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price suppression and price depression, if any. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) of the domestic industry have been compared with the landed cost of imports from the subject countries at the appropriate sections below.

a) Price Undercutting

88. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry. In this regard, a comparison has been made between the landed value of the product and the average selling price of the domestic industry net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex-factory level. The domestic prices and margin of undercutting is shown as per the table below:

Particulars	Unit	China PR	Japan	Korea RP	Subject Countries
Landed Value	Rs./KG	123.92	111.57	110.05	113.37

Net Sales realization	Rs./KG	***	***	***	***
Price Undercutting	Rs./KG	***	***	***	***
Price Undercutting	%	(18.35)	(9.30)	(8.05)	(10.75)

b) Price undercutting by cooperative Exporters

Particulars	Unit	Hanwa	BASF
Landed Value	Rs./KG	***	***
Net Sales realization	Rs./KG	***	***
Price Undercutting	Rs./KG	***	***
Price Undercutting	%	(6.35)	(6.97)

89. The authority notes that the price undercutting has been negative from subject countries.

c) Price suppression/depression

90. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority considered the changes in the costs and prices over the injury period. The factual position is shown in the table below:

Particulars	Unit	2012-13	2013-14	2014-15	POI
Cost of production	Rs./KG	***	***	***	***
Trend	Indexed	100	111	137	123
Selling Price	Rs./KG	***	***	***	***
Trend	Indexed	100	96	81	60

Landed Value (Subject Countries)	Rs./KG	166.73	162.17	153.64	113.37
Trend	Indexed	100	97	92	68

91. It can be seen from the above table that the cost of production increased from 100 indexed points in the base year to 123 points in the POI, whereas the selling price moved from 100 indexed points in the base year to 60 indexed points in the POI. In the same period landed price of imports from subject countries declined from a 100 indexed points in the base year to 68 points in the POI which shows the domestic industry had reduced the selling price to match the landed value of imports from subject countries. Price suppression is evident in the fact that the domestic industry could not increase its prices in proportion to increase in costs. The selling price of the domestic industry was reduced to a level lower than the prices in the previous period that price depression is also evident. Based on these, it is noted that the landed price of imports was causing price depression/suppression effects on the domestic industry.

H. <u>Economic parameters of the domestic industry</u>

92. Annexure II to the Anti-dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below

a. <u>Capacity, Production & Capacity Utilization</u>

93. Capacity, production and capacity utilization of the domestic industry over the injury period is given in the following table:-

Particulars	Unit	2012-13	2013-14	2014-15	POI
Capacity MT	MT	14,000	14,000	64,000	64,000

Production	MT	17,875	16,317	23,737	45,680
Capacity utilization	%	127.68	116.55	37.09	71.38

94. It is observed that capacity and production of the domestic industry increased during the POI. The domestic industry undertook capacity additions effectively 2014-15 and the capacity thereafter remained the same during the POI.

95. Capacity utilization of the domestic industry has, however, shown a decline. The domestic industry has been able to achieve a best capacity utilization of 127.68% during the base year i.e 2012-13. However, the same has declined to 71.38% during the POI.

96. It has been claimed by the domestic industry that increase in production should not be seen in isolation since the capacity utilisation remained much lower than optimal levels at 71.38% during the POI. The domestic industry could have catered to the entire Indian demand during the POI had there been no dumping. It has also been submitted by the domestic industry that though the capacity and production increased over the base year, the associated price parameters showed declines and financial losses have been suffered by the domestic industry. This has effectively negated the benefits which ought to have been achieved by the domestic industry by virtue of increase in capacity and production as per the claimant domestic industry.

b. Sales volume and market share

97. Sales volume and market share of the domestic industry is given in the following table:

Particulars	Unit	2012-13	2013-14	2014-15	POI
Domestic sales	MT	16,997	17,014	18,570	32,161
Demand	MT	49,531	51,168	57,121	64,398
Market Share of domestic industry in Demand	%	34.32	33.25	32.51	49.94

98. It is noted that sales of the domestic industry showed increases during the POI. The trend of sales is seen in the light of additions in capacity and production and also demand for the product. Though the market share of the domestic industry increased to 49.94% during the POI from a 34.32% level in the base year, the market share of imports from subject countries in the demand remained at about 49.87% in the POI. The domestic

industry has not been able to increase the sales of the subject goods commensurate with the increase in demand because of the presence of dumped imports from the subject countries.

99. It is noted in this respect that the increase in market share of the domestic industry is the result of capacity additions by the domestic industry and domestic industry was able to sell more but at a reduced and at non- remunerative price. It appears that the dumped imports maintained a market share of almost 50% during the POI by creating price depression and suppression effect on the prices of domestic industry as evident from the fact that the domestic industry had to sell at level lower than its cost of production.

c. <u>Inventories</u>

100. The position of inventories noted as average stock with the domestic industry moved as follows;

	Units	2012-13	2013-14	2014-15	POI
Average Stock	MT	748	776	1,625	2,107

101. The Authority notes that the Domestic Industry was left with accumulated inventories during the POI. The levels of inventories have been increasing as compared to the base year and have been at the highest level during the POI. It is further noted that the increase in inventories when the demand and production has been showing increases in the similar period depicts adverse volume effects on the domestic industry.

d. <u>Profit/Loss</u>

102. The profitability of the domestic industry is given in the following table;

Particulars	Unit	2012-13	2013-14	2014-15	POI
Profits	Rs./Kg	***	***	***	***
Trend	Indexed	100	48	(89)	(133)
Profits	Rs Lacs	***	***	***	***
Trend	Indexed	100	48	(98)	(249)

103. It is noted that the domestic industry has suffered financial losses concerning the subject goods during the POI. The domestic industry was earning profits during 2012-13 and 2013-14. It is noted herein from above that the landed price of imports were creating price

depression and suppression effects on the domestic prices in the same period that the domestic industry was not able to increase its selling price commensurate with the increase in cost. It is seen the cost has increased from 100 base points to 123 in the POI, whereas selling price has moved from 100 base points to 60 during the POI due to dumped imports which has dipped from 100 base points to 68 during the POI. The impact of dumped imports is evident on financial losses of the domestic industry.

e. <u>Return on capital employed</u>

104. Information regarding return on capital employed is given in the table below;

	Unit	2012-13	2013-14	2014-15	POI
Return on Capital Employed	%	***	***	***	***
Trend	Indexed	100	51	(6)	(21)

105. The Authority notes that return on capital employed of the domestic industry has deteriorated over the injury period and have been negative during the POI. The domestic industry was able to maintain its ROCE at positive levels during 2012-13 and 2013-14, however, due to the adverse prices effects created by the dumped imports, the profitability and also ROCE has deteriorated.

f. <u>Cash Flow</u>

106. Authority has examined the trends in cash profits in order to examine the impact of dumping on cash flow situation of the domestic industry. Information regarding cash profit of the domestic industry is given in the following table;

	Unit	2012-13	2013-14	2014-15	POI
Cash Profits	Rs. Lacs	***	***	***	***
Trend	Indexed	100	59	(53)	(149)

107. It is seen that the cash profits of the domestic industry declined over the injury period and has been negative in the POI in comparison to the base year. Adverse effects on cash flow are apparent.

g. Factors affecting domestic prices

108. The examination of the import prices from the subject countries, 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 the imported material from the subject countries has been below the cost of production of the domestic industry causing significant price suppression in the Indian market. Also, the selling prices have declined viz. the base year also showing price depression. Thus, the factor affecting the domestic prices is the landed value of the subject goods from the subject countries. It is also noted that the petitioner in the present investigation is the sole producer of the subject goods in India which rules out adverse effects of any unhealthy inter se competition among the producers within India. There has not been any significant change in the cost structure during the POI and the costs have declined during the POI over the previous year.

109. It has been an argument that the global prices of TDI have been the lowest during the POI. It is noted in this respect that decline in global prices per se do not rule out dumping causing injury to the domestic industry. It is seen above that due to the suppression and depression in prices, such dumped imports has led to deterioration in profitability and capital employed.

h. Productivity

110. Information regarding productivity is given in the table below;

Particulars	Unit	2012-13	2013-14	2014-15	POI
Productivity per employee	MT/Nos	***	***	***	***
Trend	Indexed	100	87	29	56
Productivity per day	MT/day	***	***	***	***
Trend	Indexed	100	91	133	256

111. It is noted that productivity of the domestic industry per employee shows declines over the base year though the same has increased over the immediate previous year. It is also noted that the productivity per day has increased during the POI. It has been submitted by the domestic industry that the cause of decline in productivity per employee is the result of underutilisation of capacity in the POI owing to dumped imports. Had there been no dumping, the production and resultantly productivity would have been higher.

i. Employment and Wages

112. Information regarding employment and wages is given in the table below;

Particulars	Unit	2012-13	2013-14	2014-15	POI
Employment	Nos.	***	***	***	***
Trend	Indexed	100	104	459	459
Wages	Rs/Kg	***	***	***	***
Trend	Indexed	100	104	208	185

113. It is noted that the employment level of the domestic industry has increased over the injury period and during the POI. Increase in number of employees and also additions in capacity is seen during 2014-15 and both remained the same during the POI. Wages per kg has shown increases during the POI over the base year and declines over the immediate previous year. It is also noted that wages per employee increased but only marginally. It has been submitted by the domestic industry that underutilisation of capacity and below optimal production owing to dumped imports may have resulted in higher element of wages per production, however, the wage increases per employee were very marginal and it has also been submitted by the domestic industry that they have the potential to create more employment in the country viz. the subject goods in the event of level playing situation in the market.

j. Growth

114. It is noted that growth of the domestic industry has been negative in a number of core parameters such as selling price, profits, ROCE etc. Such negative growth is visible when the demand for the product has showed consistent growth.

k. Ability to raise capital investment

115. The Authority notes that given the rising demand of the product in the country, the domestic industry has made additions in capacity. However, despite these investments and additions in capacity, the performance of the domestic industry has deteriorated and any further investments may also get adversely affected.

l. Level of dumping & dumping margin

116. It is noted that the imports from the subject countries are entering the Indian market at dumped prices and the margins of dumping are significant.

I. CONCLUSIONS ON INJURY

117. On an examination of various injury parameters, it is noted that there has been an increase in the volume of dumped imports from the subject countries in absolute terms. Such dumped import constituted almost 50% of the domestic demand during the POI. Imports have, thus, increased in absolute terms and constituted a considerable portion of the consumption in India during the POI.

118. The dumping margin determined by the Authority is quite significant. Dumped imports have had significant adverse price effect in terms of price suppression and depression. Effect of dumped imports has been to reduce the domestic prices of the subject goods. Dumped imports have forced the domestic industry to fetch a market price which could not even cover its cost that the domestic industry suffered financial losses.

119. With regard to consequent impact of the dumped imports on the domestic industry, it is noted that dumped imports from the subject countries have adversely impacted the performance of the domestic industry in respect of capacity utilisation, inventories, profits, cash profits, return on investment etc. The Domestic Industry's profitability and return on capital employed have been significantly affected. This is evident from the fact that the domestic industry was earning decent profits and return on capital employed till 2013-14. However, during the POI, the profits and returns have been negative. Though the capacity, production and sales increased, capacity utilisation declined during the POI apparently as an effect of about 50% share of dumped imports in the domestic demand. The domestic industry would have produced and sold more had there been no such dumped imports. Thus, the Authority concludes that the domestic industry has suffered material injury.

J. CAUSAL LINK AND OTHER FACTORS

120. Following are the causal link related submissions made by the producers/exporters/ users/ importers etc.;

i. While conducting the causal link examination factors such as sudden and substantial capacity expansion by the petitioner, plant shut-down of the petitioner in 2014, inherent problems of establishment as listed in the petitioner's Annual Report, cheap exports made by the petitioner and, additionally, the sudden enhancement of exports of about 4 times viz. the base year should be taken into consideration. These factors have led to injury in the domestic market and affected the profitability of the DI.

ii. The Petitioner has suffered injury owing to its losses in the export market. While the Petitioner may claim price suppression in the domestic market, there is no reason for it to sell goods in export market at cheaper prices / lower prices.

However, due to the increasing cost of production of the Petitioner due to inherent reasons combined with an admittedly low selling price of TDI in the global market, the petitioner has made a substantial part of its export sales on a loss basis.

iii. There is no causal link between subject imports and the alleged injury to the domestic industry. The application failed to reasonably assess the significance of the increase in volumes, there was no evidence for the significant price effect by the subject imports on domestic prices and the domestic prices were affected mainly due to the drop in the main raw materials prices, and there was no evidence that the domestic industry is experiencing injury and the subject imports have no explanatory force for the status of the domestic industry. Non attribution analysis of such as increase in capacity, decline in raw material prices etc needs to be done to segregate other factors of injury which is not done.

iv. There has not been any injury on account of allegedly dumped imports in terms of volume or price parameters. Any injury is on account of mismanagement and inefficiency on the cost factor.

v. It is apparent that injury, if any, has been caused solely on account of other reasons. Any injury on account of other reasons should not be permitted to be attributed to imports from the subject countries. Imports from subject countries did not create any adverse effect on volume or price parameters of the DI.

121. Following are the causal link related submissions made by the domestic industry;

i. Dumping is significant in the present case, domestic industry has suffered material injury and such injury is caused because of the dumping of subject goods from subject countries.

ii. Had there been no dumping, the domestic industry would not have suffered any injury in the POI. The dumped imports prevented passing on even cost of production to the customers and as a result profits, ROI, growth on various parameters etc turned negative.

iii. Both volume and value parameters put together shows the enormous effect of dumping of subject goods from subject countries on the domestic industry.

iv. It has been contended by opposing parties that capacity expansion related expenses are the cause of injury. This contention has no truth. Capacity was expanded effective 2014-15 and the DI was able to recover from any start up issues associated with the new plant before the start of the POI. Thus, the injury that occurred in the POI is not due to expansion of capacity as alleged. On the contrary, the exporters reacted to the capacity expansions by sole Indian producer by resorting to aggressive dumping to destabilise the DI at the initial stage itself

and the exporters could do significant harm to the DI with the dumping that they have resorted to.

v. It has been contended by opposing parties that the cause of injury could be plant shut downs in 2014 which has no basis. The injury in question concerns 2015-16 (POI) and not 2014. It cannot be said that the injury that have taken place during the 2015-16 period are due to any alleged plant shutdown in 2014-15 and not due to dumping in the POI.

vi. It has been contended by the opposing parties that the cause of injury could be the inherent problems associated with establishment as listed in the annual report of GNFC. The opposing parties have done some cherry picking of the discussions in the annual report. Annual report does not have anything in it which vitiates the injury suffered by the DI on account of dumping.

vii. It has been contended also that the injury are on account of the cheap exports made by the DI. This is not true. Information of exports is separately provided and the injury claimed is concerning domestic sales only. In fact the DI is competing with the exporters from subject countries in the export market also. In any case, substantial exports were made by the DI during the POI. Else the capacity utilisation would have remained even lower resulting in higher fixed costs. Had there been no exports, much more capacity would have been remained idle leading to higher cost

122. The Authority has examined whether other factors listed under the Anti-dumping Rules could have contributed to injury to the domestic industry. The examination of causal link between dumping from subject countries and material injury to the domestic industry has been done as follows:

(a) <u>Volume and prices of imports from third countries</u>

123. The imports from the countries other than the subject countries are not significant in volume terms so as to cause or threaten to cause injury to the domestic industry. Imports from other countries accounted for less than 0.5% in total. Thus, it cannot be said that imports from other countries have been causing injury.

(b) <u>Trade restrictive practices of and competition between the foreign and domestic producers</u>

124. It is noted that there is a single market for the subject goods where dumped imports from the subject countries compete directly with the subject goods supplied by the domestic industry. It is also noted that the imported subject goods and domestically produced goods

are like article and are used for similar applications/end uses. There is no evidence of trade restrictive practices and competition between the foreign producers and domestic producers causing injury to the domestic industry.

(c) Contraction of demand or Changes in the pattern of consumption

125. The Authority notes that demand for the product showed increase during the injury period and also during the POI. Thus, it can be concluded that the injury to the domestic industry was not due to contraction in demand.

(d) Development in Technology

126. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

(e) Export performance of Domestic Industry;

127. The details of exports by the domestic industry is as follows;

Period	Unit	2012-13	2013-14	2014-15	POI
Exports	MT	120	Nil	2,714	14,947
Trend	Indexed	-	-	100	429

128. Claimed injury to the domestic industry is not on account of possible significant deterioration in export performance of the domestic industry. In fact, the exports by the domestic industry have increased during the POI. Therefore, any possible decline in export performance is not a cause of any injury.

(f) Productivity of the Domestic Industry

129. The Authority notes that the deterioration in productivity has not caused injury to the domestic industry.

(g) Performance of the domestic industry with respect to other products

130. The Authority notes that the performance of other products being produced and sold by the domestic industry has not affected the domestic industry's performance, since being

the sole producer. The information considered by the Authority is with respect to the product under consideration only.

K. FACTORS ESTABLISHING CAUSAL LINK

131. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially injured over the injury period and during the POI. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

a) Imports of the subject goods have increased in absolute terms;
b) Market share of dumped imports in demand has been about 50% during the POI which is a significant percentage and the same has prevented the domestic industry from producing and selling more which it could have done in the absence of such dumped imports;
c) The domestic industry had significant unutilised capacity in the POI even though the demand had increased.
d) Inventories of the domestic industry have been on the rise;
e) There have been significant suppressive and depressive effects on the domestic prices caused by the dumped imports from subject countries;
f) The domestic industry's profitability and return on capital employed have been drastically affected. This is evident from the fact that the domestic industry was earning decent profits and return on capital employed till 2013-14. However, the same been negative during the POI

132. The above analysis shows that the domestic industry has suffered material injury due to dumped imports of PUC into India from subject countries. There exists a causal relation between the dumped imports of the subject goods originating in or exported from subject countries and the injury suffered by the domestic industry.

L. MAGNITUDE OF INJURY AND INJURY MARGIN

133. The Authority has determined Non Injurious Price for the domestic industry on the basis of principles laid down in anti-dumping Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The NIP of the domestic industry has been determined plant wise and accordingly weighted average NIP has been worked out. The weighted average NIP has been considered for comparing the landed price from each of the subject countries for calculating injury margin. For determining NIP, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been done with the utilities. The best utilisation of production capacity over the injury period has been considered. The production in POI has been calculated considering the best capacity utilisation and the same production has been considered for arriving per unit fixed cost. It

is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. Average Net Fixed Assets plus Average Working Capital) for the product under consideration was allowed as pre-tax profit to arrive the NIP as prescribed in Annexure-III and being followed. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries to determine the injury margin as follows;

S.No	Country	Producer	Exporter	Non Injurious Price – US$/ Kg	Landed price - US$/Kg	Injury Margin - US$/ Kg	Injury Margin - %	Injury Margin Range - %
1	China PR	Any	Any	***	***	***	***	10-20
2	Japan	Any	Any	***	***	***	***	20-30
3	Korea RP	Hanwha Chemical Corporation	PP and Y International Co. Ltd	***	***	***	***	30-40
4	Korea RP	Hanwha Chemical Corporation	Everlite Korea Co., Ltd	***	***	***	***	20-30
5	Korea RP	Hanwha Chemical Corporation	IMS Corporation	***	***	***	***	20-30
6	Korea RP	Hanwha Chemical Corporation	a)**PP and Y International Co. Ltd** b)**Everlite Korea Co., Ltd** c)**IMS Corporati**	***	***	***	***	25-35

			on					
7	Korea RP	BASF Company Ltd	BASF Company Ltd	***	***	***	***	25-35
8	Korea RP	Any other than the producers at S.No 3 to 7 above.	Any other than the exporters at S.No 3 to 7 above.	***	***	***	***	30-40

M. POST DISCLOSURE STATEMENT SUBMISSIONS BY THE INTERESTED PARTIES

134. The comments on Disclosure statement received from various interested parties are summarised I brief as follows;

a) Views of domestic industry

i. The exclusion of certain products sought by M/s Henkel Adhesives Technologies India Pvt Ltd is unsubstantiated and should not be accepted. Henkel initially requested exclusion of "food-safe TDI having isomer content in 80:20 imported for manufacture of food safe adhesives" and have subsequently changed the request for exclusion to "TDI having specific migration limit of 0.01 mg/kg of food and adherent to the EU Regulation 10/2011 for use in adhesives intended for food contact application. Henkel did not share the details of their imports from subject countries and merely resorted to exclusion requests of a product claimed to have imported by them. The Authority may confirm the position taken in the Disclosure statement viz. certain exclusions from PUC in the final finding.

ii. It is reiterated that what is important in view of the entire contention by Henkel is the fact that there is no difference in the TDI produced by DI and that is imported into India from subject countries. Domestically produced TDI is like article to the dumped TDI from subject countries in terms of chemical properties, uses, technology etc. Hence, no further exclusion other than what is already provided in the PUC definition should be permitted by the Authority in the final finding also.

iii. The domestic industry has suffered material injury on account of dumping from subject countries and there is a causal relationship between the two as envisaged in the AD Rules based on facts.

iv. No individual margin should be determined for Hanwha Chemical Corporation as the entity that exported the subject goods to India and that filed the EQ Response is Hanwha Fine Chemical Corporation and not Hanwha Chemical Corporation. Entire questions in the EQ Response was answered upon by keeping HFCC as the producer/exporter and in such a scenario the Authority did not have any information viz. HCC before it to grant individual margin to HCC.

v. ADD should be imposed in terms of fixed quantum determined in USD for the purpose of final finding as well. It is submitted that fixed quantum of duty is adopted in majority of investigations by the Authority as the same form is found to be more effective. Any other form of duty in a product like TDI, wherein significant volume of imports take place is imposed as reference price or so, the anticipated remedial effects of any intended protection by way of ADD would all be vitiated and the entire exercise may turn to be futile. Fixed quantum of duty shall work as a minimum protection and a reference price form would only enable the importers and exporters to easily adopt practices to loophole any duty. The DI has already suffered serious financial losses on account of dumping and any form of duty other than fixed quantum in USD will derail its recovery from injurious dumping.

vi. Post POI performance has no bearing on a fresh investigation. The request of certain interested parties to examine the post POI data, especially to advocate reference prices, is not contextual to the requirements of a fresh investigation. It has been the consistent practice of this Authority not to examine post POI performance in a fresh investigation. The Agreement provided for Reviews to examine developments in the post POI period and considering post POI data in the very fresh investigation may lead to premature and distorting conclusions. This position in the AD Agreement has been identified and upheld by the WTO Appellate Body and we place our reliance on the same. The extracts of the relevant AB Report is enclosed below;

> *"81. In our view, the Anti-Dumping Agreement takes into account the possibility of such major changes occurring at a late stage of the POI, or even after the POI, not by allowing investigating authorities to pick and choose a subset of data or sub-periods of a POI according to their subjective considerations, but by review mechanisms. Article 11.1 of the Anti-Dumping Agreement is categorical that "[a]n anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury." In furtherance of this general rule, Article 11.2 requires investigating authorities in certain circumstances, including at the request of an interested party after a reasonable period of time, to "review the need for the continued imposition of the duty". The Anti-Dumping Agreement, in sub-paragraphs 1 through 3 of Article 9.3, also lays down that the anti-dumping duty collected shall at no point in time exceed the dumping margin and that any such excess shall be refunded. Therefore, if a major change that occurs during or after the POI has reduced the margin of dumping or eliminated the*

*dumping altogether, these provisions of the Anti-Dumping Agreement ensure that the exporter's legitimate interests are safeguarded" (*European Communities – Anti-Dumping Duties On Malleable Cast Iron Tube Or Pipe Fittings From Brazil- WT/DS219/AB/R Dated 22 July 2003

vii. The Disclosure statement shows that the domestic industry has suffered material injury due to dumped imports of subject good into India from subject countries. It also demonstrates that there exists a causal relation between the dumped imports of the subject goods originating in or exported from subject countries and the injury suffered by the domestic industry. This warrants imposition of definitive anti-dumping duties on all such imports of subject goods into India. We further request the Authority to confirm the provisional duties imposed also and to recommend final duties in terms of fixed quantum in USD.

b) <u>Views of other interested parties</u>

i. DGAD has considered Hanwha Fine Chemical cost of production for 11 months except SG&A and Financial Cost and ignored the Hanwha Chemical Corporation cost of production for 1 month of the POI. DGAD has considered Hanwha Chemical Corporation SG&A and Financial Cost for 1 month for construction of COP.

ii. The facts of one year shut-down of the Petitioner's production facility in the Calendar Year 2014 owing to which imports were required to fill in the gap between Indian demand and Indian supply is not taken into consideration.

iii. The Authority should consider only the old plant for injury analysis as the new plant has clearly resulted in inefficiencies.

iv. In the context of price depression/suppression, the Authority was required to assess whether the decline in the Petitioner's prices observed by the Authority was attributable to subject imports at all. The underutilization of the capacities of the Petitioner is attributable to its inherent inefficiency and cannot, in any way, be attributed to the imports from the subject countries.

v. The Authority has not established a clear and indicative causal link between the alleged injury suffered by the Petitioners and the allegedly dumped imports from the subject countries. Sudden and Substantial capacity expansion, Plant Shut-down of the Petitioner in 2014, Inherent problems of establishment etc. are the cause of injury and needs examination in the context of causal link.

vi. The Authority must note that the only appropriate form of duty, given the unique factual situations of the present investigation, is benchmark form of duty.

vii. Various submissions on the excessive confidentiality claimed by the domestic industry including the transaction-wise DGCI&S import data may be addressed in the final finding.

viii. Authority may determine the normal value for the Chinese exporters on the basis of their records but not on the basis of constructed normal value.

ix. It is reiterated that there is no injury to the domestic industry and there is absence of causal link in the current investigation. In view of the provisions of Para (ii) of Annexure II to the Anti-dumping Rules, the domestic industry is required to first establish that the imports have increased significantly in the POI. It is submitted that the price undercutting in ranges have been kept confidential in the current investigation whereas the same are disclosed in ranges in all other investigations. We request for their disclosure in the final findings.

x. The domestic prices are moving in the different direction of their own than the prices of subject imports and the import prices have no bearing on the domestic prices. The current investigation may please be terminated on this ground also. *The WTO Appellate Body in China-Grain Oriented Flat-Rolled Electrical Steel from US* has found that the domestic industry is required to provide reasons as to how the pricing trends played a role in affecting the domestic prices.

xi. The increase in the cost of the domestic industry is due its inefficiency and closure of its plant for the significant part of the period of investigation due to its instability. The domestic industry is required to demonstrate that the reduction in the domestic prices is attributable and due to the effect of dumped imports.

xii. The cost of depreciation, interest and wages has substantially increased over Injury Investigation Period. Therefore, the reasons for the increase in the cost of the domestic industry for the subject goods are the increase in the cost of depreciation, interest, wages and overheads as a result of increase in the capacity of the domestic industry by 50000 MT.

xiii. It is submitted that there is an absence of analysis of other factors that have caused injury to the domestic industry in the current investigation. Factors such as Losses to the domestic industry in POI are due to increase in capacity, increase in cost due to instability of one of its plant, decline in prices of major raw materials needs to be considered for this.

xiv. Insufficient non-confidential version of the petition has hampered our right to file adequate rebuttals and assist Designated Authority. Such an approach vitiates the object and purpose for which opportunities are provided to the interested parties. This has led to breach of natural justice.

xv. Recommendation of Provisional Duty not in accordance with the specific requirement of Section 9B. Accordingly, a request was made to withdraw the recommendations. The disclosure statement is silent as to how pre-conditions of Section 9B were met. In view thereof, it is prayed that the Final Findings may not confirm preliminary findings in terms of requirements of Rule 20.

xvi. Petitioner has not been able to show that there is any dumping and consequent injury to the domestic industry. Annexure II (ii) and (iv) makes it mandatory for the Authority to carry out the examination of the impact of the allegedly dumped imports on the domestic industry within the parameters and guidance prescribed. Detailed submissions substantiating that the parameters show improvement are reiterated.

xvii. Excessive and impermissible confidentiality has been claimed and allowed by the Designated Authority contrary to specific jurisprudence declared by Hon'ble Supreme Court in the case of Reliance Industries Ltd. Vs. Designated Authority (supra). Further methodology adopted to reach conclusions relating to non-cooperating exporters has been kept confidential despite the fact that it is settled law that the Designated Authority has no right to claim confidentiality. None of the said submissions are dealt with in terms of the requirement of law.

xviii. Designated Authority has not provided the segregated DGCI&S data in soft copy. Pleadings of the case do not record that any party had claimed confidentiality under any other law on such soft copy of the data. Non supply of the same has resulted in breach of natural justice.

xix. Reliance was placed on WTO Appellate Body Report in DS 397 European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, obligating an authority assess the "good cause" and whether the request was sufficiently substantiated. Except quoting the same, the Designated Authority has not dealt with the submission. It is prayed that "reference price" basis duty is the most appropriate duty in the event a decision is taken not to terminate the present proceedings. An ex-parte determination on the form of duty would result in breach of natural justice. The benchmark form of duty is the only appropriate form of duty in the present facts and circumstances.

xx. Henkel has provided the regulations of EU and US which show that other jurisdictions do maintain, with good cause, a specific regulation and standard that identifies a risk posed by certain products including TDI when used in food-contact

applications. These products could contain carcinogenic, mutagenic substances or nano particles and this risk must be mitigated. In the present case, as a global and local supplier, Henkel is required to adhere to these standards.

xxi. GNFC has created a situation where it cannot/will not supply the subject goods to Henkel owing to its inability to provide the relevant certifications and comply with the required tests, and now it wants to place an undue burden on the Respondent wherein they have to pay antidumping duties and import the same. When GNFC has not completed its own due diligence and where it is clearly unable/ unwilling to supply the product required by Henkel, it appears highly prejudicial for the Authority to not grant exclusion for such a limited product.

EXAMINATION BY THE AUTHORITY

135. It is noted that the comments on Disclosure statement filed by the interested parties are primarily reiterations and reproductions of their earlier submissions in the context of Disclosure statement. All relevant opposing views and submissions are inter alia addressed under the appropriate sections in this final finding which are self-explanatory based on evaluation of the relevant facts and also in view of the relevant rules and jurisprudences to be followed by the Authority. Nevertheless, certain specific comments on the Disclosure statement raised by the parties are addressed as follows;

i. With regard to the contention of HCC concerning average Cost of Production of HFCC and HCC, it is noted that during the POI, HCC has not exported any subject Goods, therefore, Cost of Production has been calculated based on 11 months data of HFCC. Since, HFCC were merged with HCC, therefore, SG&A expenses were considered for the merged company i.e. HCC in order to arrive the cost of sales of the company.

ii. With regard to the contention of HCC that averaging the dumping/injury margin is not justified, it is noted that individual margin is determined for the producer/exporter that has been investigated for the purpose of individual margins. However, assigning exporters based duty would amount to granting multiple margins to HCC who is the producer of the subject goods. Accordingly, weighted average dumping and injury has been assessed which will culminate in formulation of duty for HCC.

iii. With regard to the contention of BASF that the Authority has neglected the factual situations surrounding the import of the subject goods and the Injury analysis conducted by the Authority, it is noted that various examination of facts relevant for the case as provided in this final finding shows that observation of BASF are devoid of any merit. Injury parameters are examined and views are taken looking at the facts and verified information of the case.

iv. With regard to the contention of BASF that one year shut-down of the Petitioner's production facility in the Calendar Year 2014 owing to which imports were required to fill in the gap between Indian demand and Indian supply is not taken into consideration, it is noted that the period mentioned is prior to the POI. In any case, demand supply gap is not any justification for dumping and the duties are not against imports per se but to remove the injurious elements of dumping only.

v. With regard to the contention that the Authority should consider only the old plant for injury analysis as the new plant has clearly resulted in inefficiencies, it is noted that injury is determined for the domestic industry. Further, for determining NIP, best utilisation over the injury period has been considered concerning raw materials, utilities etc as provided in detail under the relevant section in this finding. It is also ensured that no extraordinary or non-recurring expenses were charged to the cost of production.

vi. With regard to the request that Authority may determine the normal value for the Chinese exporters on the basis of their records but not on the basis of constructed normal value, it is noted that normal value for China PR is determined as provided in the rule. It is also noted that no exporter from China PR, who have exported the PUC during the POI, did participate in the present investigation.

vii. With regard to the contention that the increase in the cost of the domestic industry is due its inefficiency and closure of its plant for the significant part of the period of investigation due to its instability, it is noted that the Authority has ensured that no extraordinary or non-recurring expenses were charged to the cost of production.

viii. With regard to the contention that insufficient non-confidential version of the petition has hampered our right to file adequate rebuttals and assist Designated Authority, it is noted that confidential claims were permitted subject to the provisions of Rule 7 where ever applicable.

ix. With regard to the contention that recommendation of Provisional Duty not in accordance with the specific requirement of Section 9B, it is noted that provisional duties were recommended as per Rule 12 of the AD Rules by fulfilling all the requirements which was imposed later under Rule 13.

x. With regard to the contention that petitioner has not been able to show that there is any dumping and consequent injury to the domestic industry, it is noted that various discussion in this final finding specifically addresses all aspects of dumping and consequent injury to the domestic industry.

xi. With regard to the claims that "reference price" basis duty is the most appropriate duty in the present case, it is noted that the appropriate form of duty based on facts of the case alone shall be recommended in case any such duties are required to be imposed.

xii. With regard to the claim of Henkel that the Authority's analysis pertaining to its claim for exclusion of foods safe TDI is incorrect, inappropriate and fails to consider the submissions put forward, the Authority notes that Henkel in its comments on Disclosure statement stated that food safe TDI grades are currently imported from other countries by them. Present investigation has no bearing on imports of TDI from any such other countries. However, Henkel could not show whether there were any import of food safe TDI from subject countries during the POI and how such imported product were different from the TDI produced by domestic industry. Exclusion is considered by the Authority when facts show that the imported material is not like article to the domestically produced goods. As long as the imported TDI and that domestically produced are alike as provided in the Rule, no exclusion can be permitted and accordingly the claim of Henkel is not considered.

xiii. With regard to the contention of the applicant that no individual margin should be determined for Hanwha Chemical Corporation, it is noted that the facts of exports by HFCC/HCC had been duly verified and it was found appropriate to determine for HCC.

xiv. With regard to the contention that no individual margin should be given to Hanwha Chemical Corporation due to non- cooperation by M/s TAJ AL Mulook General Trading LLC, it is noted that exports from TAJ AL Mulook were not been considered for determination of individual dumping margin, however, dumping determination for rest of the exporters of the group were made based on the verified data.

N. CONCLUSIONS ON INJURY AND CAUSATION

136. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority concludes that:

I. The product under consideration has been exported to India from the subject countries below its normal value, resulting in dumping.

II. The domestic industry has suffered material injury due to dumping of the product under consideration from the subject countries.

III. The material injury has been caused by the dumped imports from the subject countries.

O. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

137. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from Iran in any manner and, therefore, would not affect the availability of the product to the consumers. The consumers could still maintain multiple sources of supply.

P. RECOMMENDATION

138. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

a. The product under consideration has been exported to India from subject countries below their normal values.

b. The domestic industry has suffered material injury.

c. Material injury has been caused by the dumped imports of subject goods from subject countries. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted an investigation into dumping, injury and causal link thereof in terms of the Anti-Dumping Rules and having established a positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti-dumping duty is necessary to offset dumping and injury concerning the imports of subject goods originating in or exported from subject countries. Therefore, the Authority recommends imposition of definitive anti-dumping duty on imports of the subject goods originating in or exported from subject countries in the form and manner described hereunder.

139. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of Definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury on imports of subject goods originating in or exported from the subject countries, so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duty on the subject goods, the description of which is specified in column (3) of the Table below, originating in the country as specified in the corresponding entry in column (4), exported from the country as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (8), as per unit of measurement as specified in the corresponding entry in column (9) and in the currency as specified in column (10) of the Table below, is recommended to be imposed from the date of the Notification which may be issued by the Central Government in this regard.

DUTY TABLE

Sl. No. (1)	Sub-heading (2)	Description of Goods (3)	Country of Origin (4)	Country of Export (5)	Producer (6)	Exporter (7)	Amount (8)	Unit (9)	Currency (10)
1	29291020	Toluene di-isocyanate	China PR	China PR	Any	Any	0.26	Kg	US$
2	29291020	Toluene di-isocyanate	China PR	Any country other than those subject to Anti dumping Duty	Any	Any	0.26	Kg	US$
3	29291020	Toluene di-isocyanate	Any country other than	China PR	Any	Any	0.26	Kg	US$

			those subject to Anti dumping Duty						
4	29291020	Toluene di-isocyanate	Japan	Japan	Any	Any	0.15	Kg	US$
5	29291020	Toluene di-isocyanate	Japan	Any country other than those subject to Anti dumping Duty	Any	Any	0.15	Kg	US$
6	29291020	Toluene di-isocyanate	Any country other than those subject to Anti dumping Duty	Japan	Any	Any	0.15	Kg	US$
7	29291020	Toluene di-isocyanate	Korea RP.	Korea RP.	Hanwha Chemical Corporation	a)PP and Y International Co. Ltd b)Everlite Korea Co., Ltd c)IMS Corporation	0.22	Kg	US$
8	29291020	Toluene di-isocyanate	Korea RP	Korea RP	BASF Company	BASF Company	0.31	Kg	US$

					Ltd	Ltd			
9	29291020	Toluene di-isocyanate	Korea RP	Korea RP	Any combination other than mentioned in Sl. No.7 &8 above		0.44	Kg	US$
10	29291020	Toluene di-isocyanate	Any country other than those subject to Anti dumping Duty	Korea RP.	Any	Any	0.44	Kg	US$
11	29291020	Toluene di-isocyanate	Korea RP.	Any country other than those subject to Anti dumping Duty	Any	Any	0.44	Kg	US$

140. Subject to the above, the Authority confirms the preliminary findings dated 28th March, 2017, however duty recommended above would be applicable from the date of imposition of provisional anti-dumping duty as per Section 9A(2) of the Custom Tariff Act 1975.

141. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(Sunil Kumar)

Additional Secretary & Designated Authority