

**F. No.14/06/2015-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Anti- Dumping & Allied Duties**  
**Jeevan Tara Building, New Delhi-110001**

Dated ...10th March, 2017

**NOTIFICATION**  
**(Final Findings)**

**Subject: Final Findings in the Anti-dumping duty investigation against imports of  
Aluminium Foil originating in or exported from China PR.**

F. No. 14/06/2015-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, as amended from time to time, (hereinafter also referred to as the Rules) thereof;

**A. Background of the Case**

1. Whereas M/s Hindalco Industries Ltd. Mumbai, M/s Raviraj Foils Ltd. Ahmedabad and M/s Jindal India Ltd. Kolkata (hereinafter referred to as petitioners) have jointly filed a duly substantiated application before the Authority, as the domestic industry of the subject goods , in accordance with the Act and the Rules, alleging dumping of the ‘Aluminium Foil (hereinafter referred to as subject goods, ), originating in or exported from China PR (hereinafter also referred to as the subject country), alleging dumping of subject goods and consequent injury to the domestic industry and requested for levy of anti-dumping duty on the imports of the subject goods from the subject country.
2. As part of the preliminary scrutiny, the department had written a letter to the Ministry of Mines and Department of Industrial Policy and Promotion and asked for the list of producers of the subject good in India along with the data of production, capacity of production, imports of the subject goods made from the subject country, if any for the period 2011-12 to 2014-15. The letter was duly replied by the Ministry of Mines enclosing information furnished by Aluminium Association of India, in which, the list of producers of the subject goods in India was provided.
3. And whereas, the Authority on the basis of sufficient evidence submitted by the applicant to justify initiation of investigation issued a public notice vide Notification No. 15/10/2015 - DGAD dated 15<sup>th</sup>December 2015, published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with the Rule 5 of the Rules, to determine the existence, degree and effect of 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.

## **B. Procedure**

4. Procedure described below has been followed with regard to this investigation, after issuance of the public notice notifying the initiation of the above investigation by the Authority.
  - i. The Authority notified the Embassies/Representatives of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.
  - ii. The Authority sent a copy of the initiation notification to the embassy of the subject country in India, known producers/exporters from the subject country, known importers/users in India, other Indian producers and the domestic industry as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.
  - iii. 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.
  - iv. The Embassy of the subject country in India was also requested to advise the exporters/producers from China to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from China PR.
  - v. The Authority sent Exporter's Questionnaire and Market Economy Questionnaire to elicit relevant information to the following known producers/exporters in accordance with Rule 6(4) of the Rules:
    - a) Dingsheng Aluminium Industrial Co., Ltd.
    - b) Hebei North China Aluminium Co. Ltd.
    - c) Jiangsu Alcha Aluminium Co., Ltd.
    - d) Xiamen Xiashun Aluminium Foil Co., Ltd.
    - e) Shanghai Shenhua Aluminium Foil Co.,Ltd,
  - vi. In response, the following producers/exporters from the subject country filed exporter's questionnaire in the prescribed format:
    - a) Alcha International Holding Ltd.
    - b) Dingsheng Aluminium Industries Hong Kong Trading Co Ltd
    - c) Hangzhou Five Star Aluminum Co. Ltd.

- d) Hangzhou Dingheng Import & Export Co. Ltd.
- e) Jinagsu Alcha Aluminium Co. Ltd.
- f) Jinagsu Dingsheng New Material Joint - Stock CO. ltd.
- g) Loften Environmental Technology Co. ltd.
- h) Loften Aluminium (Hong Kong)
- i) Qingdao Loften Aluminium Foil co. Ltd.
- j) Zhejiang Zhongjin Aluminium Industry Co. Ltd
- k) Zhejiang GKO New Material Co. Ltd.

vii. Except for Loften Environmental Technology Co. Ltd., none of the producers/ exporters from China PR have responded to the Market Economy Treatment (MET) Questionnaire. Hence, the other, cooperating exporters have been given non-market economy treatment in the present investigation. Loften Environmental Technology Co. Ltd claimed market economy treatment and has submitted Market Economy Treatment (MET) questionnaire response.

viii. The Authority sent importer's questionnaires to elicit relevant information to the following known importers in accordance with Rule 6(4) of the Rules:

- a) Alutop
- b) Aarti Drugs Ltd.
- c) Ansa Print Pack Pvt Ltd
- d) Betts India Private Limited
- e) Blue Star Limited
- f) Banco Products (India) Ltd.
- g) Cadbury India Limited
- h) CadillaPharmecuetics Ltd
- i) Climate Systems India Ltd.
- j) Dr. Reddy's Laboratories Ltd.
- k) Dalal Packaging
- l) Foil pack Industries
- m) Green Pack Foils Pvt. Ltd.
- n) Glaxosmithkline Pharmaceuticals Ltd.
- o) Hindustan Latex Limited
- p) Hitachi Home & Life Solutions (India) Ltd.
- q) Jhaveri Flexi Laminate Pvt.Ltd.
- r) Jain Packaging Pvt.Ltd.
- s) Koch - Glitch Limited
- t) K A Alu Foil
- u) Macleods Pharmaceuticals Ltd
- v) Nipra Industries Pvt. Ltd.
- w) Polycom Associates
- x) Pfizer Limited
- y) Rainbow Plastics India Limited
- z) Ranbaxy Laboratories Limited

- aa) R.S.Foils Pvt Ltd
- bb) SwastikFlexipackPvt.Ltd.
- cc) Supermak Industries
- dd) The Paper Products Ltd
- ee) Technova Tapes India Pvt Ltd
- ff) Subros Auto Air-conditioning System
- gg) Jewel Paper private Ltd.
- hh) Jil pack Flexible Packagingmaterials
- ii) U. P Twiga Fibre glass Ltd.
- jj) TaniyaPolyfilmsPvt. Ltd.
- kk) Flexible Packaging Entrepreneurs Orient Association
- ll) Orient Press Ltd Flexible Packaging Division
- mm) RockdudeImpex Pvt Ltd.
- nn) Sehgal Packaging Pvt. Ltd.
- oo) Sanwariya Packaging Pvt. Ltd.
- pp) Kap Cones Pvt. Ltd.
- qq) Sarthak Packaging Pvt. Ltd.
- rr) Modern Laminators Pvt. Ltd
- ss) Printman
- tt) Print-N-wrap
- uu) Baddi Foils Pvt. Ltd.

vi. Importer Questionnaire Response was received from the following importers or consumers of the product in India:

- a) Flora Industries
- b) Huhtamaki PPL Limited
- c) Indian Overseas Exports Pvt. Ltd.
- d) International Traders
- e) Modern Laminators Pvt. Ltd.
- f) MAHLE Behr India Private Limited
- g) Nagreeka Foils Ltd.
- h) NagreekaIndcon Products (P) Ltd.
- i) Nagreeka Synthetics Private Ltd.
- j) Purple Incorporation
- k) Scraft Products Pvt. Ltd.
- l) Tania Poly Films Pvt. Ltd.
- m) Tetra Pak India Private Limited
- n) Uflex Limited
- o) U.P. Twiga Fibreglass Ltd.
- p) Veeram Natural Products

vii. As per the list of producers, given by the Ministry of Mines, the Authority has also sent intimation of the initiation of the investigation to the following Indian producers and

had sought relevant information. The communication was sent to the following Indian producers:

- a. Hindalco Industries Ltd.
- b. Raviraj Foils Ltd.
- c. Jindal India Ltd.
- d. PG Foils Ltd.
- e. Gujrat Foils Ltd.
- f. Ess Dee Aluminium
- g. India Foils
- h. AMCO India Ltd.
- i. Metenere Ltd.
- j. RS Foils Pvt. Ltd.
- k. JP Foils
- l. Marudhar
- m. Indu Foil
- n. Jindal
- o. Paragon
- p. Jasch Foils
- q. SVE Jharkhand
- r. SVC Hyderabad

viii. Apart from the respondent exporters, importers, domestic industry and other domestic producers mentioned above, submissions have been received on behalf of the following parties during the course of this investigation. However, no importer questionnaire have been filed by the following parties.

- a) Anu Exim Private Limited
- b) Bilcare Limited
- c) HBR Packaging
- d) Indian Flexible Packaging and Folding Carton Manufacturers Association
- e) Svatm Packaging Industries Pvt. Ltd.
- f) Esselpropack Ltd.
- g) Hitachi Home and life (I) Ltd.
- h) United Breweries Ltd.
- i) Hanon Climate Systems India Pvt. Ltd.
- j) PranavVikas (India) Pvt. Ltd.
- k) Anu Exim Pvt. Ltd.
- l) Bilcare Research Ltd.
- m) Alstrong Enterprises India Pvt Ltd.

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

- x. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigations, which was received by the Authority. The Authority has, relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions; The transaction wise import data was placed in the public file. The Authority has also procured data from DG Systems to complement the analysis of the DGCI&S data.
- xi. The Non-injurious Price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xii. The Authority held an oral hearing on 10th May, 2016 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6 (6), which was attended by the representatives of domestic industry, exporters from China PR and importers. The interested parties who presented their views orally at the time of oral hearing were advised to file written submissions of the views expressed orally. The interested parties were provided opportunity to offer rejoinder submissions to the views expressed by opposing interested parties.
- xiii. Due to change in the incumbency of the Designated Authority and in line with the judgment of the Hon'ble Supreme Court in the ATMA case, another oral hearing was conducted by the new Designated Authority on 4<sup>th</sup> November, 2016. The parties, who presented their views in the 2nd oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
- xiv. On the spot verification of the data of the domestic industry, as well as that of the cooperating exporters, was carried out to the extent considered necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of this finding.
- xv. The Period of Investigation (POI) for the purpose of the present investigation is April, 2014 to June, 2015. The examination of trends in the context of injury analysis covers the periods April 2011-March 2012, April 2012-March 2013, April 2013-March 2014 and the POI.
- xvi. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this finding.
- xvii. 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 as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.

- xviii. 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 findings on the basis of the facts available.
- xix. In accordance with Rule 16 of the Rules Supra, the essential facts were disclosed by the Authority on 14<sup>th</sup> February, 2017 to the concerned interested parties. Comments were requested by 21<sup>st</sup> February, 2017. Comments received on the disclosure statement to the extent considered relevant by the Authority have been considered in this final finding.
- xx. \*\*\* in this final finding represents information furnished by an interested party/any other party on a confidential basis and so considered by the Authority under the Rules.
- xxi. The exchange rate for the POI has been taken by the Authority as Rs.62.13 = 1 US\$.

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

- 5. The product under consideration notified in the initiation notification is “Aluminium Foil whether or not printed or backed with paper, paper board, plastics or similar packing materials of a thickness ranging from 5.5 micron to 80 micron excluding AluAlu Lamine and Ultra Light Gauge Converted and Capacitor”.
- 6. Aluminium ingots are rolled into sheets called Aluminium flat rolled product (FRP). Aluminium Flat Rolled products (FRP) are rolled further into foils. The essential difference between the two is in thickness. The FRP have thickness greater than 80 microns .the rolled FRP(aluminium foil ) may be sold as it is, or, it may be printed or laminated (also called backed) with paper, board, plastic or other packaging materials. Aluminium foils may be printed either by the producers or by converters or by end consumers.
- 7. Aluminium Foil is used extensively for the protection, storage, and preparation of foods and beverages. Major applications of aluminium foil are in the pharmaceuticals industry for packing medicines; food industry for packing processed foods, cigarette industry for wrapping cigarettes & other applications.
- 8. The subject goods is subsumed within Chapter 76 of the Custom Tariff Act, 1975 under subheading No. 7607. However, the Customs classification is indicative only and is in no way binding on the scope of the present investigation.

#### **Submissions by exporter, importer and other interested parties**

- 9. The following are the submissions made by exporters/importers/other interested parties with regard to scope of the product under consideration and like article:

Exclusion claimed by the other interested parties-

i. Ultra Light Gauge:

- a) Aluminium foil of thickness less than 7 micron should be excluded from the scope of investigation. Domestic industry claimed to have produced less than 7 micron in safeguard petition, now in Anti-dumping, they confess that at time of safeguard, they were not making less than 7 micron, these are two contradictory statements. Further in order to generate, evidence domestic industry has raised few invoices to small influential buyers with whom they have upper hand.
- b) Aluminium foil of thickness of less than 7 micron is not supplied by the domestic industry as per the specifications required by the user industry, making them unusable. Mere supply will not suffice but rather supplying a product that is capable of being used is the standard that is required to be met in the case at hand.
- c) 60% of PUC imported is of light gauge and ultra-light gauge. The domestic industry must substantiate why other grades have been included in PUC and not the two products itself.
- d) Aluminium foil required by the consumers is not sold as per technical specifications by any of the petitioners and must be excluded from the scope of the product under consideration, specifically, Aluminium Foil of thickness less than 7 microns and of thickness between 9 and 12 microns used in lamitubes.
- e) The domestic industry is not equipped to make the required quality of light gauge foil. Light gauge and ultra light gauge cannot be considered as like products and should be excluded from this petition.
- f) Domestic industry's claim with respect to manufacturing of foil of thickness of less than 7 micron, upto 5.5 micron and foil of thickness of 6.35 micron has no basis because the domestic industry has not made available any information related to quantities manufactured and sold during the POI. Nor the details of rejection have been provided by the domestic industry.
- g) Jindal has one new plant of Achenbach and Hindalco has one old obsolete plant of same make. Assuming that both are producing light gauge foil to full capacity, they cannot produce more than sx2=1400 tons. This capacity is far less than actual requirements of 3500/4500 MT of light gauge foil alone being imported from China and therefore this product type should be excluded from the scope of investigation

ii. Exclusion accepted by the Domestic Industry:

- a. Aluminium Foil Composite - “Aluminium foil Composite” (aluminum foil backed with Kraft paper, glass scrim, glass cloth, whether plain or printed) should be excluded. Safeguard Duty investigation against

imports of Aluminum Flat Rolled Products and Aluminum Foil to India from China excluded Aluminium Composite Panels from the product scope. Moreover, the final findings show that Aluminium Composite Panels are not manufactured by Hindalco.

- b. During the oral hearing the petitioners had accepted that they do not manufacture or sell composite aluminium foil. The same has not been accepted in the written submissions.
- c. Clad with non clad Aluminium- 'Aluminium- Manganese- Silicon based and/ or clad Aluminium- Manganese- Silicon based alloys, whether clad or unclad: with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.
- d. Some interested parties require clad with compatible non clad aluminium foil which is used in heat exchangers used specifically only in radiators in vehicles and engines in cooling systems. This is excluded by petitioner.
- e. Crown cap of beer bottle- No manufacturer of aluminium foils in India has the capability/ technology to produce aluminium foils used on the neck and the crown cap of beer bottles. The specific type of aluminium foils for the purposes of beer bottles range from 8.5 microns to less than 11 microns. The same was excluded during the safeguard investigations in 2009.

iii. House Hold Foil/Semi-Rigid Container-

- a. The categories of Aluminium Foils which requires specific exclusion are House Hold Foil (HHF) in thickness between 9 microns in alloy AA 8011 and Semi Rigid Container foil (SRC) or Aluminium Foil Container (AFC) foil in thickness between 34 microns and 80 microns made from Alloy 3003.
- b. Raviraj Foils Ltd does not manufacture House Hold Foil. Hindalco has a minuscule production of which they might be using for their captive consumption. If Anti-dumping duty is imposed on the subject good there will be no one in the market to compete with Hindalco in downstream product segment of House Hold Foil.
- c. The requirement of SRC is largely in Alloy 3003 which is not being manufactured in India. Hindalco Industries Ltd and Jindal India Ltd have not even replied to enquiries for SRC made of Alloy 3003 because they don't manufacture Alloy 3003. Other domestic producers have also not responded to query suggesting no production of such product type.
- d. The production of House Hold Foil and Semi-rigid Container in Indian market is not sufficient to meet the requirement of Customers as they lack in quality.

- e. According to the list of importers in the petition, it can be noted that none are importing raw material Semi-rigid Container/House Hold Foil for Aluminium Foil Containers (AFC) and Aluminium Foil Rolls (AFR). Hence, domestic industry is not affected by AFC/AFR imports and so the same should be excluded from PUC as well.
- f. The domestic industry has not provided a break up of either capacity or production in House Hold Foil and Semi-Rigid Container foil segment. The product wise capacity must be examined by the authority. On such examination, it will be surely established that domestic industry has grossly insufficient capacity to meet the demand of the Indian market.
- h) The domestic industry has refrained from commenting on its inability to manufacture even 1614 mm width aluminium foil. The domestic industry has the capability to manufacture aluminium foil upto 1560 mm. At present few users have a width requirement upto 1768 mm and the same is also not being provided by the domestic industry.
- iv. Aluminium foils of thickness 160, 170, 180 and microns used for the production of Vials Seals for injectable for pharma industries should be excluded from the levy of anti-dumping duty as no manufacturer in India manufactures it.
- v. A safeguard investigation and a review were conducted for the subject goods in 2009 and 2011 respectively. The situation has not changed since then and the domestic industry lacks the capability to produce certain type of aluminium foil, which should be excluded from the scope of product under consideration.
- vi. PUC is defined broadly without considering whether the domestic industry is commercially capable of producing the goods. The definition of PUC is very wide and includes wide range of subject goods made of different Aluminium grades, which are not produced by the domestic Industry. Different microns have different usage and objective evaluation cannot be arrived by clubbing the same under one category. There is no disclosure by the petitioner that what kind of goods are produced and sold by them during the POI.
- vii. Quality-
  - a) Pin hole requirements of the packaging industry is 150 per square meter while the domestic industry supplies aluminium foil with pin holes above 500 per square meter. This renders the product unusable and consumers have to resort to imports.
  - b) Consumers require aluminium foil roll width up to 1800 mm whereas the petitioners can manufacture aluminium foil roll width in the range of 1250-1560 mm only.

- c) Downstream industries use aluminum foils in microns 10.5, 11, 18, 36, 38, 42 and 44 to make aluminium foil containers and aluminum foil rolls. Aluminium foil of these thickness supplied by the petitioner is not usable so the downstream industries are forced to import the subject goods.
- d) The domestic industry has remained silent on the issue of oil stains, sir pockets, flatness, wrinkling, flapiness and limping of its products and also on the issue of pinhole requirement.
- e) The foil supplied by domestic industry is unsuitable for use by the pharma packaging industry. Hindalco foil in 8011 alloy cannot be registered with pharma customer as it is out of specification in case of the pinhole parameter, heat resistance, moisture resistance etc.

viii. Only bare aluminium foil should be included within the scope of the investigation and particularly aluminium whether printed or not printed or backed with paper, paper board, plastics or similar packing materials should be excluded from the scope of the investigation.

ix. Bare aluminium foil used by some of the interested parties have to be highly flexible, high strength vapour barrier having Class O fire certification as per BS 476 Part 6 and 7 which is not manufacture by the domestic industry.

x. In the absence of data on sales of the specified thickness made during the POI, it cannot be claimed that domestic industry is manufacturing aluminium foil of thickness less than 7 microns and 12 microns. Evidence of the exact quantities manufactured and sold by the domestic industry during the POI on a monthly basis should be provided.

xi. The details of the PUC alongwith the PCNs have not been provided by the domestic industry in their written submissions despite the assurance given by them during the oral hearing. A request has been made for exclusion of Cold Formable Foils (popularly known as AluAlu) from the scope of the product under investigation and the construction methodology of the PCNs.

xii. There is very less import of Aluminium foil of 45-60 microns made from alloy 8021 and having width 900 to 1000 mm, approximately 0.89% of total imports of aluminium foil in India. Thus, it will in no way harm the domestic industry and should be excluded from the product scope.

xiii. AluAlu laminate is being imported from Korea at 0% duty under the FTA. AluAlu Laminate is excluded from the scope of the current investigation whereas, AluAlu Stock is included. Thus the AluAlu Laminate manufacturing industry is already suffering due to the imports from Korea.

- xiv. Many resellers in the AluAlu Laminate industry have slitting set up for 900mm and 1000 mm and are not in a position to process higher width material as supplied by Hindalco.
- xv. The domestic industry provides guarantee of just 3 months (shelf life) as against the guarantee of 12 months shelf life provided by the exporters of aluminium foil.
- xvi. The product under consideration as defined in the Initiation Notification fails to take into account whether or not the particular types of Aluminium Foil are being produced by the Petitioners.
- xvii. The Aluminium Foil required for its use is not sold as per technical specifications by any of the Petitioners and must therefore be excluded from the scope of the product under consideration.
- xviii. Whether or not a particular thickness of aluminium foil is being produced by the domestic industry must be examined in the period of investigation, failure to supply a particular grade or type of aluminium foil in the period of investigation is a clear indication of the fact that the particular thickness of product is not being manufactured and sold by the domestic industry.
- xix. Machinery imported by Hindalco from the UK is outdated machinery and the issues mentioned in reference to the product currently supplied are going to arise with the new machinery as well.
- xx. Petitioners use old outdated machinery and low quality raw materials which results in additional issues with respect to the product such as presence of oil stains, air pockets, flatness, flapiness and limping, among other things. The local foil converting industry for pharma packaging is facing unfair competition by domestic manufacturers of aluminium like Raviraj who insist on purchase of coated films against their requirement of bare aluminium foil. Domestic manufacturers do not pass through the GMP and HMP audits.
- xxi. Due to high demand-supply gap there are partial supplies, delivery delays and failures on the part of the domestic industry.

### **Submissions by Domestic industry**

9. The following are the submissions made by the domestic industry with regard to product under consideration and like article:
  - i. Product excluded in petition-
    - a. The product under consideration is aluminium foil having thickness from 5.5 micron to 80 micron. Aluminium foils are produced and consumed even below 5.5 micron. However, since none of the petitioning companies produced foils

below 5.5 micron, the same has been specifically excluded from the scope of the investigation.

b. Specifically excluded are Ultra Light Gauge(converted), AluAlu laminates and Capacitor from the scope of product under consideration for the reason that the petitioning domestic industry is not producing these types.

ii. Product excluded in oral hearing-

- a. "Aluminium Composite Panels" (aluminium foil backed with Kraft paper, glass scrim, glass cloth, etc., whether plain or printed) should be excluded. Safeguard Duty investigation against imports of Aluminium Flat Rolled Products and Aluminium Foil to India from China excluded Aluminium Composite Panels from the product scope. Moreover, the final findings show that Aluminium Composite Panels are not manufactured by Domestic Industry.
- b. Domestic industry has accepted in their written submissions that Aluminium Foil backed with Kraft paper, glass scrim, glass cloth, etc whether plain or printed may be excluded from the scope of investigation.
- c. 'Clad with non-clad aluminium foil used in radiators in vehicles and engines and in cooling systems' may be excluded from the scope of investigation.

iii. About the product:

- a. The rolled FRP is a bare foil and may be sold as it is or it may be coated, printed or laminated (also called backed) with paper, board, plastic or other packing materials. Aluminium foils may be printed either by the producers or by converters or by end consumers.
- b. The product is consumed in different thicknesses depending upon end application requirements. Different market segments have different typical thickness requirements. The cost and price of the product under consideration changes with material composition, coated/ laminated and thickness.
- c. Different applications of the product under consideration require different composition in the product. Different composition is achieved by using desired composition in the raw material (Foil Stock). In order to achieve the desired technical specifications in the product under consideration, the producer is merely required to requisition right specifications in the Foil Stock - whether sourced in-house or bought from the market.

iv. Aluminium foil of thickness less than 7 microns was excluded from the scope of product under consideration under the safeguard investigation carried out in 2009 because the domestic industry at the time of safeguard investigation did not manufacture the same. However, in the present investigation Aluminium foil having thickness between and including 5.5 to 7 which is called ultra light gauge foil micron should not be excluded from the scope of the present investigation for the reason that is manufactured by the domestic industry and supplied to the downstream consumers in India.

- v. The domestic industry at the time of safeguard investigation comprised only of Hindalco, whereas the domestic industry at present comprises of Hindalco, Jindal India and Raviraj Foils. Jindal India has now manufactured foil of thickness of upto 5.5 microns while Hindalco also manufactured the subject goods of thickness of 6.35 microns and above and has supplied the same to the consumers in India.
- vi. As regards the quality of the subject goods of thickness less than 7 microns, the domestic industry has received several certifications from authorities around the world for their product and also letters of appreciation from their clients for the quality of their products.
- vii. Hindalco has imported five machines for the manufacturing of ULG aluminium foil at its Mouda plant, from its related entity in the UK and has one of the best facilities, comparable to any global manufacturer. However, out of the five units, only two are currently installed and in operation while the rest are still awaiting installation due to adverse market conditions created by dumping of the product under consideration. This was physically shown to the verification team during spot verification visit.
- viii. Regarding the claims of exclusion of aluminium foil of width of 1800mm, it needs to be pointed out that the widest import of aluminium foil to India has been of 1614 mm. A factually incorrect claim has been made by the interested party. Above all, it has not been established that foil below 1800 mm cannot be used in substitution to foil above 1800 mm.
- ix. Certain importers have averred that Semi Rigid Container foil (“SRC”) is manufactured by the domestic industry using alloy 8006, whereas they require SRC manufactured using alloy 3003 due to quality concerns and thus they import the same. This argument has no basis and can be justified as follows:
  - a. Hindalco manufactures SRC and sells using alloy 8006. It is well established position that the difference in raw material composition does not lead to a different product unless the end product itself is a different product.
  - b. SRC is being sold by Hindalco at a price much higher than the price at which 8006 alloy SRC is being sold by competition. This clearly implies that the product being sold by Hindalco in the market is not inferior to its competition. Therefore, foil for SRC of 3003 and 8006 cannot be considered as different product types.
  - c. Hindalco produces radiator foil using alloy 3003. If Hindalco can produce one type of foil using alloy 3003, there is no reason why Hindalco cannot produce SRC using alloy 3003. Exclusion of SRC made of alloy 3003 would lead to other users of SRC to import this product and evade ADD.
  - d. The only reason why it does not manufacture SRC using alloy 3003 is that it lacks commercial viability. Hindalco will produce and supply SRC using alloy 3003, provided it is getting orders at reasonable price.
- x. Difference in quality is not a sufficient justification for exclusion of a product as has been held by the Designated Authority and upheld by the Hon’ble CESTAT in the matter of *DSM Idemitsu Limited Versus Designated Authority*.

- xi. The Domestic Industry has supplied goods for aluminium foil containers and aluminium foil rolls. Thus, the product type is being produced and used by consumers and is in commercial competence with the imported subject goods.
- xii. Merely because one of the consumers is not able to use the goods produced and supplied by the petitioners when other consumers in the same segment have used and produced the eventual end product, does not justify exclusion of a product type.
- xiii. Regarding the captive consumption of aluminium foil for house hold foil purposes, the domestic industry is willing to supply the material to downstream users provided it gets viable prices for the same, especially in a situation where the domestic industry is unable to utilise its capacities.
- xiv. The fact that the composition of aluminum in foil produced by petitioner is different from composition of aluminum in the containers (SRC) produced by other producers in India is immaterial. In fact, Hindalco is selling SRC at a price much higher than competition, which clearly shows that the HHF or SRC produced by Hindalco is no way inferior to HHF or SRC being produced by other producers in India using different composition of aluminum
- xv. Concerning the exclusion of lamitubes, the domestic industry has manufactured and supplied the product type to various domestic consumers of the product and regularly continues to do so. If in fact there were any quality concerns, as averred by the importers, the domestic industry would not have received repeated orders for the product.
- xvi. The definition of product under consideration is not wide. Goods not produced by the domestic industry have been specifically excluded from the product scope. Various authorities around the world have considered much wider scope of product under consideration than in the present investigation.
- xvii. It is alleged by the exporters and other interested parties that where the domestic industry is not able to fulfil the demand of the industry with regard to a particular good, that product requires exclusion from the product under consideration.
  - a. The same argument cannot be accepted because any product type should not be excluded just because there is demand supply gap. In fact, allowing dumping in a product where Indian industry is not able to meet the demand shall lead to a situation where Indian industry shall eventually vanish. Larger public interest demands that such industry should be more aggressively protected to save product and production in the Country. The industry needs a fair level playing field in order to remain viable and to grow.
  - b. The petitioning domestic industry invested significant amounts in setting up new production facilities which are producing products comparable to international standards. Hindalco is holding significant facilities uninstalled. If the market for PUC is viable, the company shall install the equipment lying in packed conditions in the warehouse. Should dumping be checked, Hindalco shall further expand the capacities which shall produce products comparable to international markets.

- c. The machinery of Hindalco has been purchased from Novelis UK. These provide very good gauge and shape control facility. The Achenbach machines used by Jindal India are also state of the art for the ULG production and were brought brand new.
- xviii. Submissions regarding a wider range of Product Under Consideration:
  - a. Merely because the PUC is produced in large number of thicknesses does not imply the scope of PUC is inadmissible or inappropriate. In fact, a number of investigations have been conducted by authority where the PUC includes a large number of different product types. Further, authority has conducted number of investigations where various product types are not homogeneous.
  - b. Different product types have thickness in narrow band. Even when scope of PUC includes a wide range of thicknesses, an analysis of dumping margin, undercutting and injury margin has been undertaken after dividing the product into number of sub-groups and products falling within each sub groups are largely homogeneous.
- xix. Quality concern raised:
  - a. By the own claim of the interested parties, the domestic industry has supplied foils in microns 10.5, 11, 18, 36, 38, 42 and 44 to make aluminum foil containers and aluminum foil rolls. It is not even the contention of the interested parties that the domestic industry is not producing the product type required by them. They claim that goods supplied by the domestic industry are not usable to them.
  - b. The mere fact that one of the consumers is not able to use the goods produced and supplied by the petitioners when other consumers in the same segment have used and produced the eventual end product, does not justify exclusion of a product type.
- xx. Like article:
  - a. There is no known difference in product produced by the petitioners and exported from China. Both products have comparable characteristics in terms of parameters such as physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc.

### **Examination by the Authority**

10. Number of interested parties has raised number of issues with regard to the scope of PUC in the present case. It has been contented that the scope of the PUC is too wide and includes a large number of heterogeneous products, which have significantly different cost, price and end use. Further, interested parties have sought exclusion of a large number of product types from the scope of PUC on the grounds that the domestic industry does not produce and supply the product in the desired product type, or, the quality of the product produced and supplied by the domestic industry is different, or, the

domestic industry supplies a product in a different product composition. The arguments of interested parties have been examined by undertaking on the spot verification at the premises of the petitioning companies and calling relevant information from the parties.

11. Regarding exclusion of product type, it is noted that the product under consideration for the purposes of the present investigation is aluminum foil. The dumping and injury analysis has been done for aluminum foil as a whole. Different types of aluminum foil are comparable in term of essential product characteristics including physical, production technology, manufacturing process, plant & equipment, functions & usage, etc. Different product types serve the same general function of packaging. While different aluminum foils have different specific end applications, it is noted that all aluminum foil essentially performs the same function. Different categories/types are intended to meet different end-user requirements. The design of the aluminum foil differs as per the end -use requirements. However, the operations and machinery necessary for manufacturing are essentially the same for all kinds of aluminum foil. Therefore, different types of aluminum foils constitute one article and it would not be appropriate to exclude product types, if the domestic industry is manufacturing the like article to the product being imported into India.
12. As far as request for exclusion concerned i) AluAluLaminate (ii) Ultra Light Gauge Converted (iii) Aluminium Foil Composite (iv) Aluminum foil for capacitors (v) Etched or formed Aluminium Foils (vi) Aluminium Composite panels (vii) Clad with compatible non clad Aluminium Foil (viii) Aluminium Foil for beer bottle, the authority notes that the domestic industry has agreed to the exclusion of these product types. The domestic industry has agreed to exclude these product types; the authority proposes to exclude these product types from the scope of PUC.
13. The authority notes that the scope of PUC in any case does not include Aluminium foil below 5.5 micron. Thus, any aluminium foil below 5.5. Micron is beyond the scope of present investigations and proposed recommendations.
14. The domestic industry has excluded following types of PUC at the stage of petition itself.
  - i. Aluminium foil having thickness below 5.5 micron
  - ii. Ultra Light Gauge (ULG converted), and AluAlu laminates
15. The other interested parties have contended that the domestic industry produces and supplies semi rigid container(SRC) and foil using alloy 8006 and 8011 as compared to the alloy used by Chinese suppliers i.e. alloy 3003. The interested parties have also contended that the SRC container made out of 3003 alloys is superior as compared to the Semi-rigid container made out of 8006 alloy. The authority notes that the information on record shows that the SRC container is produced using 8006 and 8011 alloy and sold by the domestic industry at a price higher than the prices at which Semi-rigid container of 3003 alloy has been imported from China. Further, one of the consumers of SRC foil stock has bought SRC foil stock having alloy 8006 form the domestic industry and has also imported SRC foil stock having alloy 3003 from China.

16. The interested parties have actually bought both kind of SRC foil stocks and have sold Semi-rigid containers in the market. There is sufficient evidence to show that Semi-rigid containers having 3003 alloy and SRC container having 8006 alloy have been interchangeably produced and sold by the same set of consumers. Further, no distinctive price difference between the SRC container having 3003 alloy and SRC container having 8006 alloy has been established by the interested parties. It would therefore not be appropriate to exclude SRC foil stock having 8006 alloy or SRC container having 3003 alloy from the scope of PUC.
17. It is also noted that the domestic industry has provided evidence showing production of foil of different application having 3003 as the alloy. This clearly shows that the domestic industry in fact has 3003 alloy available to them for production of desired foils.
18. Regarding exclusion of Semi-rigid Container/House Hold Foil for Aluminium Foil Containers (AFC) and Aluminium Foil Rolls (AFR), it is noted that the product types are imported into India and the domestic industry is producing and supplying the like article to these product type. Different types of aluminium foils constitute one article and it would not be appropriate to exclude product types, if the domestic industry is manufacturing the like article to the product being imported into India.
19. Further, there is no quantified evidence provided by interested parties to show the alleged quality difference between the domestic and imported product. It is also noted that the authority in general does not consider difference in raw material composition sufficient enough to distinguish two products as different articles, unless, it is demonstrated with positive verifiable evidence that the alleged difference in raw material indeed leads to distinctly different products.
20. Ultra Light Gauge Aluminium foil – A number of interested parties have sought for exclusion of ultra-light gauge Aluminium foil from the scope of investigation. Some interested parties have sought exclusion of 5.5. micron ultra-light gauge stating that the domestic industry does not produce this kind of product type. A number of interested parties have sought exclusion of ULG foil on the grounds that ULG foil produced and supplied by the domestic industry does not meet the quality standards required for this product. Further, some interested parties have sought exclusion of ULG having width 1800 mm on the ground that the domestic industry does not produce and supply this width of material.
21. As far as exclusion of ULG 5.5 Micron is concerned, the domestic industry has provided documentary evidence in the form of commercial invoice showing product sale of ULG 5.5. Micron. Since the domestic industry has produced and supplied ULG 5.5. Micron, the claim of interested parties, that the domestic industry did not produce and supply this type of a product is factually incorrect and therefore could not be accepted.
22. A number of interested parties have contended that the pinholes in the aluminum foil supplied by the domestic industry are far higher than the pinholes in the aluminium foil produced and supplied by the Chinese suppliers. It has also been contended that the consumers of ULG foil do not accept aluminium foil having pinholes beyond 150. It is, however, noted from the document provided by the parties requesting exclusion that Chinese producers and suppliers have produced and supplied the aluminium foil having

pinhole upto 500. In fact, the product specification of the Chinese supplier clearly mentions pinhole as 600. It is also noted that there is no standard prescribed by BIS with regard to maximum pinholes that may be in an aluminium foil. Since product specification sheet of the Chinese producers and the domestic industry show pinholes in the region of 200-800 sq./mtr, it cannot be contended that the ULG produced and supplied by the Chinese producers have pinholes upto 500. The authority notes in this regard that if the government has prescribed certain standards of a product and the same are supplied by the domestic industry, the consumers cannot demand that the product type produced by the domestic industry does not meet the desired standards.

23. It has also been contended that the capacities for ULG available with the domestic industry are far lower than the demand for ULG in the country.
24. The DI also contended that Hindalco, one of the petitioner company, has significant capacity for this kind of product type. For this purpose, there are machines lying in stock and the company has not been able to install them yet. M/s Hindalco has submitted that it has five production line, each of which having 18000 MT capacities, which are capable of making ULG Film out of which the company has installed and made operational only one product line till POI. Further, the company is now in the process of installing one more production line and has still not decided to install the three production lines and inventories. M/s Hindalco has submitted that dumping of this product type has actually prevented the company from making operational these production capacities.
25. M/s Ravi Raj, being one of the producers of the PUC has provided evidence that they are now in the process of setting up another production line having capacities of 21,000 MT which shall also be dedicated to the production of ULG. The authority notes that the present and potential capacities shall be 40,000MT as against existing demand for this product type.
26. As regards the request for exclusion of ULG having 1800mm width, the authority notes that the questionnaire response file by the importer and the import data do not show the import of ULG in desired width. Since the importer has not imported ULG having 1800 mm width, and further since the import data does not show import of ULG 1800mm, in any case the argument of interested party appears without basis. Further, it is noted that PUC is eventually not consumed in such a vide width. In fact, the PUC is eventually consumed in much smaller width. Thus, the product type produced and supplied by the domestic industry and product type imported from China are interchangeably used. Since the domestic industry has produced and sold an article comparable to imported product, it would not be appropriate to exclude this kind of product from the scope of PUC.
27. As regards the contention that the domestic industry does not have sufficient capacity to meet the demand of ULG in the country, the authority notes if there is a demand supply gap in the country, the foreign producers can certainly fill the gap in the country by bringing the product at a fair price. Demand supply gap does not justify dumping of the product.
28. Regarding the submissions on the product scope in safeguard investigation, it is noted that the Director General Safeguard conducted the investigation in 2009 wherein the petitioner companies and the scope of the product under consideration was also different.

The circumstances since then have undergone a change. The Authority has verified the claims of the capability of the petitioner companies and concluded the product scope accordingly.

29. It is noted that the present investigation is against dumping of aluminium foil (including alualu stock) in India causing injury to the domestic industry. Imposition of anti-dumping duty on Alualu stock would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers. It is seen that more than 70% of the imports of alualu stock are being sourced from countries other than China PR. This clearly shows that the consumers are largely buying alualu stock more from countries other than China. Imposition of anti-dumping duty on alualu stock will not affect the availability of the products to the consumers.
30. A number of interested parties have sought exclusion of household foil from the scope of PUC on the grounds that there is only one producer who produces and supplies this kind of foil and this producer is substantially producing the product for its own consumption. The interested parties have also brought evidence to show that some of the interested producers have in fact stated that they do not produce and supply this kind of product. The authority notes that it is not necessary that each and every constituents of the domestic industry should produce and supply each and every type of product. In fact, in a situation where a large number of producers are producing and selling a product which has a large number of product types, it is quite natural that every producer tends to focus on some product types and none of the producers could wish to produce entirety of the product range. Further, in any case, it is noted that this kind of product type is produced and supplied by more than one producer.

#### **Conclusion on product scope**

31. In view of the foregoing, the scope of product under consideration for the purpose of present investigation and proposed measures is as follows :

*Aluminium Foil whether or not printed or backed with paper, paper board, plastics or similar packing materials of a thickness ranging from 5.5 micron to 80 micron excluding*

- i. *Alu Alu Laminate : AluAlu Laminate of 40 - 50 mic in AA8079 & AA8021, is a multi-layered opaque laminate where Aluminium foil and is backed with plastic film on both side with adhesives; for use in packing capsules/tablets.*
- ii. *Ultra Light Gauge Converted : Ultra Light Gauge Converted is an aluminium foil having thickness of 5.5 6 mic to 7 mic which and is backed with kraft paper & scrim, or glass cloth, whether plain or printed for use in insulation, spices packing, thermal fluid lines covering and tea bags application.*
- iii. *Aluminium Foil Composite: aluminium foil laminated with or backed with Kraft paper and glass scrim or glass cloth with or without poly ethylene, whether printed or not printed. Aluminium foil laminated with or backed with Kraft paper however is within the scope of the product under consideration and proposed measures.*

- iv. *Aluminum foil for capacitors :Aluminum foil for capacitors is an Aluminum foil of 5 micron gauge with smaller widths having 99.35% purity, for use in electrical equipment such as radios, televisions, telephones, computers, microwave ovens, electrical welders, magnetos, electronic testing equipment, copy machines, air conditioners, automobiles, fluorescent lights, mercury vapour street lamps, power transmission equipment, electric motors, control units, and similar articles.*
- v. *Etched or formed Aluminium Foils : Etched or formed Aluminium Foils is Aluminium Foil meant to be used in the manufacture of Electrolytic Capacitor*
- vi. *Aluminium composite panel - Aluminium composite panel is a non-aluminium core (often PE) bonded between two thin layers of aluminium, for use in facade cladding and signage.*
- vii. *Clad with compatible non clad Aluminium Foil: Clad with compatible non clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater.*
- viii. *Aluminium Foil for beer bottle: Aluminium Foil of 10.5 micron with rough surface and perforated whether printed or not; to be used in beer bottle*

32. With regard to like articles, Rule 2(d) of the AD Rules provides as under: -

*"like article " means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;*

33. After considering the information on record, the Authority holds that there is no known difference in product under consideration exported from subject country and the product produced by the Indian industry. The subject product produced by the domestic industry are comparable to the Product under consideration in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

34. Thus, the Authority holds that the subject product produced by the applicant domestic industry is like article to the Product under consideration, in accordance with the AD Rules.

### **PCN System**

35. The petitioner had determined dumping margin, price undercutting and injury margin at the time of application by following criteria to differentiate different types of the product under consideration.

36. Post initiation, and after receipt of questionnaire responses from various interested parties, the authority proposed following criteria [modal match criteria or product control number system (PCN system)] to differentiate different types of the product under

consideration in order to determine dumping margin, price undercutting and injury margin.

- i. Alloys (1235, 8003, 8006, 8011, 8021, 8079 etc)
- ii. Product category:
  - a) AluAlu Stock (AA)
  - b) House Foil (HF)
  - c) SRC (SC)
  - d) Other Aluminium foil (OF)
- iii. Plain (PPP)
- iv. Printed/coated (PRI)
- v. Bare Foil (BFO)
- vi. Backed with paper (BWP)
- vii. Backed with paper board (BPP)
- viii. Backed with plastics (BPL)
- ix. Backed with any other similar packing materials (BSM)
- x. Micron (05.0, 08.3, 15.0, 70.0, 80.0 etc)
- xi. Width (4 digit code based on actual width in mm)

37. Comments were invited from all interested parties vide communication dated 10th August, 2016. After receipt of comments from all interested parties, the interested parties were advised to provide additional/supplementary information considering the PCN system determined by the authority. The interested parties provided information in the PCN system decided by the authority. The authority has adopted this PCN system for the purpose of present determination.

## **B. DOMESTIC INDUSTRY AND STANDING**

### **Submissions by producers/exporters/importers/other interested parties**

38. The following are the submissions made by exporters/importers/other interested parties have made any submissions in this regard:

- i. The Petition does not have standing as "domestic Industry" as it does not have support of 50% of the industry of Indian market producing the subject goods.
- ii. Raviraj Industries does not fall under the domestic Industry as it has imported the subject goods from the subject country during the POI.
- iii. Ravi Raj foils have imported certain quantities of the subject goods. The Authority should analyze the same in detail. Mere quantity of import is not sufficient to examine if they are eligible for being domestic industry.
- iv. M/s Raviraj Foils Ltd has imported \*\*\*of their total production and hence are not eligible to be domestic industry. Further, if this fact is accepted by the authority then the cost and price of only the eligible domestic producers for the purpose of injury analysis must be taken.

- v. Detailed analysis needs to be made regarding the imports made by M/s Raviraj Foils from the subject country taking into account the volume of imports and also the nature of use of the imported volumes.
- vi. The petitioners have cherry picked the companies. Selection of only three companies is intentional to show maximum injury. As per rules, all the producers of like product should have been included as domestic industry.
- vii. Performance of the industry producing like products should be examined rather than only three producers.
- viii. M/s PG Foil Limited should not be considered for standing as it is only \*\*\* of the market and may be related to the importer or exporter. Its performance would distort the trend of injury. It accounts for a production of \*\*\* of the industry while the domestic industry accounts for the production of \*\*\*. M/s PG Foils is doing exceptionally well. So if they are considered for domestic industry then their data should be considered for determination of Non Injurious Price as well.
- ix. Current investigation is without jurisdiction as M/s Raviraj has been considered as domestic industry even though it has imported product under consideration from China. \*\*\* import was considered significant import volume in tiles.

### **Submissions by the Domestic Industry**

39. Following are the submissions made by the domestic industry with regard to scope of the domestic industry and standing:

- i. Barring M/s Raviraj Foils, none of the petitioners have imported the product under consideration from the subject country during the POI. M/s Raviraj Foils have imported negligible volumes from the subject country which amount to \*\*\* of their total production. The volume of these imports was low/ insignificant in relation to total imports, Indian demand and Indian production and domestic industry production. Petitioners are eligible domestic industry in terms of Rule 2 (b) of AD Rules.
- ii. The petitioners constitute domestic industry within the meaning of the Rules, even if M/s Raviraj Foils is treated as ineligible domestic industry.
- iii. The petitioners constitute a major proportion of the Indian production and the petitioners satisfy the requirement under Rule 2(b) of the AD Rules.
- iv. The petition has been supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application. The petition has been filed by those domestic producers whose production constitutes a major proportion. Further, the petition is supported by more than 50% production of those domestic producers who are either supporting or opposing the petition.

v. Notwithstanding other arguments, the Designated Authority has considered proportion less than \*\*\* as a major proportion of total Indian production in a number of cases.

### **Examination by Authority**

40. Rule 2 (b) of the AD rules defines domestic industry as under:

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

41. The application was filed by M/s. Hindalco Industries Ltd., M/s Raviraj Foils Ltd. and M/s Jindal India Ltd. and was supported by M/s PG Foils Ltd. Further, there are a few other producers of the subject goods, apart from the applicants and supporters.

42. As per the Anti-dumping Rules, the Authority is required to examine whether (a) domestic producers expressly supporting the application account for more than twenty five percent of the total production of the like article by the domestic industry; and (b) the application is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application. The applicants constitute 41% of the total domestic production and with support of PG Foils; applicants constitute 56% of the total Indian production.

43. The present investigation is supported by the Aluminium Association of India. The Association has expressed their concern towards the significant dumping taking place of the subject good from the subject country. The Association supports the present investigation and wants anti-dumping duty to be imposed against the dumped imports of the subject goods from China.

44. The Authority considers that none of the applicants needs to be excluded from the scope of domestic industry since none of them, barring M/s Raviraj Foils, have imported the subject goods from the subject country during the period of investigation, nor are they related to any exporter or importer of the subject goods. It is noted that M/s Raviraj Foils has imported the product under consideration from China PR.

45. It has been contended by the interested parties that M/s Raviraj Foils cannot be treated as domestic Industry, as it has imported the subject goods from the subject country during the POI. The Authority has examined imports made by M/s Raviraj Foils Ltd. in detail considering the volume of imports made by them in absolute terms and in relation to their own production, Indian production, and imports from China and demand/consumption in India. Table below demonstrates.

**Table-1**

	UOM	POI
Production Ravi Raj	MT	***
Demand in India	MT	1,24,788
Imports in absolute term	MT	***
Imports from China	MT	71,938
Imports in relation to imports from China	%	***
Imports in relation to their production	%	***
Imports in relation to Indian Consumption	%	***

46. It is also noted that M/s Raviraj Foils has sold the imported subject goods after refurbishing the same to the domestic market. The authority called information on imports by the company after the POI. It was found that the volume of imports by the company have increased after the POI. Though the imports of the subject goods by M/s Raviraj Foils from China PR is not so significant, but since almost all the imported subject goods were sold in the domestic market, and the company has given no plausible reasons for importing the product when the company itself is engaged in production of the product, the Authority finds that the company has unduly benefited from such dumping. Therefore, the Authority holds that it would not be appropriate to consider M/s Raviraj Foils as a constituent of the domestic industry.

47. The Authority notes that after exclusion of M/s Raviraj Foils from the scope of eligible domestic industry, the domestic industry standing requirement under Rule 2(b) is fulfilled by the other two petitioners i.e. Hindalco and Jindal India, along with the support of another producer i.e. PG Foils Ltd.

#### **Production of the industry without M/s Raviraj Foils**

**Table-2**

<b>Particulars</b>	<b>Unit</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>POI Annualised</b>	<b>POI (Apr'14-June'15)</b>
Petitioners Production	MT	15,532	14,677	13,283	17,077	21,346
Supporter Production	MT	***	***	***	***	***
Petitioners including Supporter	MT	***	***	***	***	***
Other Producers Production	MT	***	***	***	***	***
<b>Total Indian Production</b>	<b>MT</b>	<b>39,139</b>	<b>37,779</b>	<b>39,465</b>	<b>42,165</b>	<b>52,706</b>
Share of Petitioners	%	40	39	34	41	41
Share of Supporter	%	***	***	***	***	***

Petitioners including Supporter	%	***	***	***	***	***
Share of Other Producers	%	***	***	***	***	***
Total	%	100	100	100	100	100

10. The Authority had written a letter to the Ministry of Mines and Department of Industrial Policy and Promotion and asked for the list of producers of the subject good in India along with the data of production, capacity of production, imports of the subject goods made from the subject country, if any for the period 2011-12 to 2014-15. The letter was duly replied by the Ministry of Mines enclosing information showing the list of producers of the subject goods in India and production of the major producers. Hence Aluminium Association of India was considered as representative of the producers of the subject good.

48. In view of the above and after due examination, the Authority holds that the applicants, with the exclusion of M/s Raviraj Foils Ltd. satisfy the requirements of Rule 2(b) and Rule 5(3) of the AD Rules. Applicants except M/s Raviraj Foils Ltd. satisfy the requirement of standing under the Rules. Further, the applicants excluding M/s Raviraj Foils Ltd. constitute domestic industry within the meaning of Rule 2(b).

## C. CONFIDENTIALITY

### Submissions by exporter, importer and other interested parties

49. The exporter, importer and other interested parties made the following submissions:

- Deficient petition was filed by the domestic industry as against the proforma. Excessive confidentiality has been claimed and non-confidential version has not been provided for various information.
- Excessive confidentiality is claimed by the domestic industry such as price undercutting margin in the petition, share of the petitioner without the supporter, production data. Whereas standing data is never kept confidential, data for normal value determination on the basis of price in India, annual reports of the company are available in public and therefore there is no reason why that should be kept as confidential.
- Due to excessive and unjustified allocation/apportionment of depreciation and interest, the non-injurious price determined by the domestic industry is against the principles enunciated under Annexure III of the AD Rules and the same has been wrongly inflated, accordingly, the injury margin has also been wrongly determined.
- Excessive confidentiality has been maintained by the domestic industry. The basic assumptions based on which the domestic industry has attempted to draw or structure

period of investigation, without idle time have not been provided to enable interested party to comment thereon.

- v. Excessive confidentiality has been claimed by the petitioner on the following:
  - a) Purchase policy, sales policy, store accounting policy, quality control policy.
  - b) Audited annual accounts for the POI as well as preceding 3 years.
  - c) Price undercutting margins has not been provided.
- vi. No excess confidentiality is claimed by the users/importers in communication exchange with domestic industry regarding the quality of the goods or its inability to supply the product and the same has been provided in the written submissions.
- vii. The Domestic Industry has claimed excessive confidentiality in providing soft copy of transaction-wise import in MS Excel format, Purchase Policy, Sales policy, Store accounting policy, quality control policy, Audited annual account for the Period of investigation as well as preceding 3 years, Normal Value computation of China PR.
- viii. The business license contains business sensitive information and therefore the same has been claimed confidential.

#### **Submissions by Domestic industry**

50. The Domestic Industry made the following submissions:

- i. The responding exporters have resorted to excessive confidentiality in a bid to prevent the domestic industry from defending its interests. The interested parties have claimed even their Business License as confidential document. Article 63 of the Regulations of the People's Republic of China on the Administration of Company Registration clearly states that such business license should be on an "eye-catching position". Thus, it should be publicly available. Such publicly available information cannot be claimed as confidential information.
- ii. Two responding exporter groups have other related entities manufacturing the subject goods in the subject country whose names have been claimed to be confidential in the Exporter Questionnaire Responses. It is stressed here that this information is in public domain and does not merit any confidentiality.
- iii. Only Loften Environmental Technology Co. Ltd., QigdaoLoften Aluminium Foil Co. Ltd. and Loften Aluminium (Hong Kong) (which is a Hong Kong based exporter only) have filed their questionnaire responses. The other three exporters have not filed their questionnaire responses, however they manufacture the subject goods and their names are available on the website of the company. Since such information is publicly available, any confidentiality claim made in that regard stands nullified.
- iv. Producers and exporters of the Dingsheng group have claimed the names of other related producers as confidential. Their information is also available publicly.

## **EXAMINATION BY AUTHORITY**

51. 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.*

52. Submissions made by the interested parties with regard to confidentiality and considered relevant by the Authority are examined and addressed accordingly. 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. 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. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

## **D. MISCELLANEOUS SUBMISSIONS**

### **Submissions by exporter, importer and other interested parties**

53. The exporter, importer and other interested parties made the following submissions:

- i. It is important for the domestic industry to supply aluminium foil which meets the specific requirements of the user industry. Supply of foil that is not capable of being used cannot be considered as supply of the particular grade.
  
- ii. Imports are made majorly due to two reasons, first is that the domestic industry is not able to meet the specific requirement of the market and secondly it is not able to cater to the demand of the market.

- iii. No evidence related to quality of the goods, rejection of the goods or inability/regret to supply particular types of products has been provided by the Domestic Industry. The Domestic Industry has always abstained from doing so and the interested parties never got an opportunity to comment on that. And if such evidences are filed with rejoinder, the Authority should reject those submissions.
- iv. No invoice of production of ULG of 5.5 micron and foil thickness of 12 micron is attached with the submissions of the domestic industry.
- v. Domestic industry has abstained from providing a lot of information without any reason, such as bifurcation of imports on the basis of thickness, information on price undercutting, dumping margin & injury margin on PCN basis. Domestic industry did not give any reason for not providing that information or did not even treat them as confidential information.
- vi. Hindalco Industries have got many divisions in the Aluminium chain starting from Ingot to the PUC. They have a policy of transfer pricing to transfer the Ingot to the sheet stage, then the sheet to the foil division, etc. the DA must strictly scrutinize the same to thwart any attempt of the domestic industry to pad up losses on other accounts to PUC in order to take undue benefits of AD duty.
- vii. Domestic industry claims to be a multi-product company and therefore they cannot estimate actual manufacturing expenses.
- viii. Letters of appreciation by the clients is not made available to the interested parties.
- ix. Current LME and SME price along with exchange rate has already made import of foil unviable.
- x. Once ADD is imposed on product under consideration, it will create a monopolistic situation and the prices shall be increased by the domestic industry, resulting into closure of wide spread SMEs who are dependent on this product. Hence it will be against public interest.
- xi. The application submitted by the domestic industry is incomplete and is in contradiction with the facts as are contained in the Annual Reports of the domestic industry. The petition is based on unacceptable assumptions, distorted data and is also not supported with necessary evidence in this regard.
- xii. Injury margin when computed should consider the landed value based on 7.5% customs duty and not \*\*\*.
- xiii. As a result of excessive and unjustified allocation/ apportionment of depreciation, NFA, working capital, capital employed and interest. The NIP determined by the

domestic industry is against the principles enunciated under Annexure-III of the AD rules and the same has been wrongly inflated.

- xiv. The petitioners have conceded to the fact that the investigation before Director General Safeguards has been terminated on account of withdrawal of the petition. This shows that the petitioner was unable to establish dumping. Hence, it is not appropriate for the domestic industry to mention that case as investigation initiation against import of Aluminium foil in India. The claims of the petitioners that there is no connection between the petition before DG safeguards and the present petition is misplaced, wrong and denied.
- xv. The reason for resorting to imports as against sourcing from the domestic industry is not primarily linked with the import price rather it is related to the quality and the requirement of the end users in terms of the technical properties required.

### **Submissions by Domestic industry**

54. The Domestic Industry made the following submissions:

- i. Safeguard investigation for the product was earlier conducted considering period of investigation as April 2008 – December 2008. Facts found by the Director General Safeguards are however no longer applicable to the facts of the present case. The position of domestic industry has materially changed since imposition of safeguard duties, particularly with regard to scope of the product under consideration and product types that are being made by domestic industry. In view of the same, petitioner requests authority to kindly ignore the conclusions drawn in safeguard investigation for the present purposes.
- ii. The scope of domestic industry considered in the safeguard investigation was much different than the scope of domestic industry for the present purpose. While only Hindalco constituted domestic industry at the time of safeguard investigations, M/s Hindalco, M/s Jindal India and M/s Raviraj Foils constitute domestic industry in the present case.

### **Examination by the Authority**

55. Various submissions have been made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed as follows:

56. The argument of insufficient information provided by the domestic industry in the application filed by them, the Authority notes that the application contained all information relevant for the purpose of initiation of investigation. The Authority, only after satisfaction that application contained sufficient evidence to justify initiation of the investigation decided to initiate the present investigation. Further, subsequent to initiation, information has been sought from the applicant to the extent deemed necessary and the same has been provided by the applicant for the purpose of the

present findings. The Authority notes that quality and quantity of evidence improves as an investigation progresses.

- i. Regarding the invoices of product type, the same is provided by the petitioners on confidential basis and the Authority has appropriately examined it. Commercial invoices are commercial sensitive information and cannot be disclosed.
- ii. Regarding the arguments of injury margin calculations, it is noted that injury margin is based on Non injurious price which is calculated as per the methodology prescribed in Annexure 3 of the AD Rules. Further, the custom duty as prevailing during period of investigation is adopted which settle arguments regarding custom duty.
- iii. As per the submissions of the other interested parties the anti-dumping duty would result in monopolistic situation, it is noted that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers.
- iv. As far as the argument of demand supply gap is concerned, it is noted that if the exporters wanted to supply the goods to meet the requirement in Indian market that could be done by exporting the requirements at a price equivalent to normal value but not at a dumped value to capture the market.
- v. Regarding the argument that current LME and SME price along with exchange rate has already made import of foil unviable, it is noted that this argument has no relevance for the purpose of anti-dumping investigation. 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.
- vi. As argued by the other interested parties about the capability, quality and specifications of the product manufactured by the domestic industry and those imported in to India, it is noted that since the product manufactured by the domestic industry is held as like article to the product being imported into India and the two are used interchangeably by the users/importers, such issues raised by the interested parties without concrete evidence to establish the same, has no relevance.
- vii. Regarding the argument of petitioner companies being multi product or multi division company, it is noted that the performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the domestic industry's performance. The information considered by the Authority is with respect to the product under consideration only.

#### **F. Market Economy Treatment (MET), Normal Value, Export Price And Dumping Margin**

57. 'Normal Value' under the Rules-

According to Section 9A (1) (c) of the Customs Tariff Act, 1975 'Normal Value' in relation to an article means: -

*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*

*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*

*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 transshipped 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.*

**Submissions by exporter, importer and other interested parties**

58. The following are the submissions made by exporters/importers/other interested parties have made any submissions in this regard:

- i. As per paragraph 10 of the Initiation Notification, normal value has been claimed on the basis of cost of production in India, duly adjusted. This is in contravention of the requirements of law under Annexure 1(7) of the ADD Rules.
- ii. The Authority has relied upon the data provided by the petitioners, which is the last option provided under Annexure 1(7) of the ADD Rules. Authority can resort to the last option only if first two options of paragraph 7 of Annexure I are exhausted and the same was held by the Hon'ble Supreme Court in the matter of *Shenyang Matsushita S. Battery Co. Ltd Vs. Exide Industries Ltd and Others* [(2005) 3 SCC 39].
- iii. As per Annexure I Paragraph 7 of the AD Rules it is mandatory to inform the parties to the investigation about the selection of third country market economy along with reasonable time to provide their comments. The normal value ascertained for China is incorrect and authority should convey the international price of raw materials and consumption norms of the material and utilities.

- iv. Petitioner has considered Marine Insurance @ \*\*\* of the FOB where as in reality it is only \*\*\* on FOB. Also there is commission paid on the goods imported from Chinese Industries. Export price determined in the petition lacks supporting evidence. The dumping margin is based on erroneous normal value which has artificially increased due to lowered export prices.
- v. Dumping margin should be calculated by using information provided by the exporters in response to the exporter's questionnaire. The dumping margin determined in the petition is flawed. Injury should be analysed by excluding imports of the goods requested for exclusion.
- vi. Information on price undercutting and dumping margin and injury margin based on PCN wise is not enclosed
- vii. The petitioners have not been able to establish any injury being suffered by them due to the imports. Their own data shows that they lack the capacity to meet the domestic demand.
- viii. Use of raw material prices as per the petitioner's procurement prices should not be accepted by the authority as they are distorted.
- ix. The investigation must be terminated as petitioners have no merit in the case and further, they have already got an extra protection by way of \*\*\*increase in the basic customs duty which makes BCD now at 7.5% as provided in Budget 2016

### **Submissions by Domestic industry**

59. The domestic industry inter alia submitted as follows:

- i. China is a non-market economy country. No country has granted market economy status to China. Further none of the exporters satisfy each and every condition developed from jurisprudence to qualify for grant of market economy status. Thus, the Chinese producers' cost and price cannot be relied upon for determination of normal value.
- ii. Petitioners resorted to the last option as they did not have information required for an appropriate market economy third country. The interested parties also had sufficient time and opportunity since initiation of investigation to suggest an appropriate market economy third country and produce appropriate evidence for the same. There is no bar in interested parties suggesting an appropriate market economy third country.
- iii. These interested parties had opportunity to lodge their independent claims. If the interested parties have failed to exercise their rights and discharge their obligations, they cannot find fault either with the petitioners or with the authority.

- iv. India is an appropriate surrogate country for China as it would result in access to accurate and adequate information. Further, India has been considered as an appropriate surrogate country by other investigation authorities too.
- v. The normal value has been determined accordingly on the basis of cost of production in India, duly adjusted, in view of the fact that the selling price is a loss making price.
- vi. The petitioners have relied upon transaction wise import data provided by DGCI&S for calculation of export price.
- vii. In view of significant difference in the cost of and price of various product types, petitioners have determined separate export price for each product type.
- viii. Owing to difference in costs and price of various product types, the dumping margin has been determined separately for each type. It is seen from the above that the dumping margins are not only de-minimis but also substantial.
- ix. Petitioners have adopted conservative approach in making adjustments for the calculation of export price. The Authority has, since initiation of present investigation, received responses from exporters. The Authority may verify the export price adjustments and adopt appropriately.
- x. The interested parties had sufficient time and opportunity since initiation of investigation to suggest an appropriate market economy third country and produce appropriate evidence for the same. There is no bar in interested parties suggesting an appropriate market economy third country. In fact, the Designated Authority would require sufficient evidence and claim to adopt an appropriate market economy third country. The interested parties have itself not exercised its rights and is merely engaged in pointing allegations.
- xi. The export prices have been determined with sufficient supporting evidences. The claim of import price is based on customs data and therefore has to be considered most authentic. Petitioner have enclosed with these submissions estimates of dumping margin without making any adjustments whatsoever from the export price.

#### **Examination by the Authority- China as non-market economy**

60. 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."*

61. Article 15 implies that provisions of one of the subparagraph shall expire 15 years from date of China's Accession. The provisions of this paragraph expired in 11<sup>th</sup> Dec., 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, 2014 to June, 2015. 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 prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

62. The Authority notes that in the past three years China PR has been treated as 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.
63. Authority notes that following exporter/producers have responded and filed questionnaire response.
  - a) Alcha International Holding Ltd.
  - b) Dingsheng Aluminium Industries Hong Kong Trading Co Ltd
  - c) Hangzhou Dingheng Import & Export Co. Ltd.
  - d) Hangzhou Five Star Aluminum Co. Ltd.
  - e) JinagsuAlcha Aluminium Co. Ltd.
  - f) JinagsuDingsheng New Material Joint - Stock CO. ltd.
  - g) Loften Environmental Technology co. ltd.
  - h) Qingdao Loften Aluminium Foil co. Ltd.
  - i) Loften Aluminium (Hong kong)
  - j) Zhejiang Zhongjin Aluminium Industry Co. Ltd
  - k) Zhejiang GKO New Material Co. Ltd.

64. The Authority notes that none of the exporters/producers have claimed MET except Loften Environmental Technology Co. Ltd.

#### **Examination of Market economy claims**

65. As per Paragraph 8, Annexure I to the Anti-Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provides information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China PR 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 Designated 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

66. The Authority notes that Loften Environmental Technology Co. Ltd from China PR have responded to the questionnaire pertaining to market economy status and to the exporters' questionnaire, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. The questionnaire responses and the market economy responses of the responding producers and exporters were examined for determination of normal value of the responding producers/ exporter of the subject goods.

67. Further, Vide letter dated 5<sup>th</sup> August, 2016 Loften Environmental Technology Co. Ltd withdrew their claim of market economy treatment.

68. Therefore in view of the withdrawal of market economy treatment claim by the exporter and producer from China PR, the Authority has not granted market economy treatment to the company and has adopted the constructed normal value for determination on normal value in terms of Para-7 to Annexure-1 to the Rules.

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

69. In view of the above, the Authority has determined normal value having regard to para-7 of Annexure-I for the purpose of present investigation. The normal value for the subject products imported from China PR into India has been constructed considering optimum consumption norms of the domestic industry for major raw materials, cost of raw materials as per domestic industry prices, conversion cost, interest, SGA etc. at the levels allowed for the domestic industry. \*\*\* of cost of sales excluding interest has been allowed towards reasonable profit.

### **E. Determination of Export Price**

70. The following producers/exporters filed exporter's questionnaire (EQ) response in the present investigation

- a) Alcha International Holding Ltd.
- b) Dingsheng Aluminium Industries Hong Kong Trading Co Ltd
- c) Hangzhou Five Star Aluminum Co. Ltd.
- d) Hangzhou Dingheng Import & Export Co. Ltd.
- e) Jinagsu Alcha Aluminium Co. Ltd.
- f) Jinagsu Dingsheng New Material Joint - Stock CO. ltd.
- g) Loften Aluminium (Hong kong)
- h) Loften Environmental Technology co. ltd.
- i) Qingdao Loften Aluminium Foil co. Ltd.
- j) Zhejiang Zhongjin Aluminium Industry Co. Ltd
- k) Zhejiang GKO New Material Co. Ltd.

**Determination of Export Price of Hangzhou Five Star Aluminum Co. Ltd, Jiangsu Dingsheng New Materials Joint-Stock Co Ltd (“Jiangsu Dingsheng”) and Hangzhou Dingsheng Import & Export Co., Ltd. (“Dingsheng I&E”), Dingsheng Aluminium Industries Hong Kong Trading Co Ltd**

71. During the POI, three entities within the Dingsheng Aluminium Group were involved in production of the subject goods, namely Hangzhou Five Star Aluminium Company Limited (“Hangzhou Five Star”), Jiangsu Dingsheng New Materials Joint-Stock Co Ltd (“Jiangsu Dingsheng”) and Hangzhou Dingsheng Import & Export Co., Ltd. (“Dingsheng I&E”). In respect to exports of the subject goods to India, Jiangsu Dingsheng, Dingsheng I&E and Dingsheng Aluminium Industries (Hong Kong) Trading Company Limited (“Dingsheng Hong Kong”) were involved in exporting the subject goods to India within the Dingsheng Aluminium Group. All the aforesaid entities have participated in the investigation and a verification of the data submitted by the entities was conducted.
72. The goods produced by Hangzhou Five Star have been exported to India through Dingsheng I&E, Jiangsu Dingsheng and Dingsheng HK. In addition, Jiangsu Dingsheng, a producer and exporter, exported the goods to India directly, through Dingsheng I&E and through Dingsheng HK. Further, Dingsheng I&E exported the subject goods directly to India and through Dingsheng HK.
73. The Dingsheng Aluminium Group primarily exported aluminium foil of thickness less than 7 micron during the POI to India. However, it also exported certain quantities of aluminium foil of higher thickness such as 9 micron, 10 micron, 12 micron, 20 micron, etc, to India.
74. The total exports by the Dingsheng Aluminium Group during the POI was \*\*\* tonnes. The ex-factory export price was determined after making the price adjustments on account of inland transportation, ocean freight, ocean insurance, credit cost, bank charges, port and handling expenses and non-refundable VAT. The dumping margin of the above exporting and/or producer for their direct as well as indirect exports have been worked out as mentioned in the dumping margin table.

**Export price of M/s Qingdao Loften Aluminium Foil Co. Ltd, M/s Loften Environmental Technology Co. Ltd. and M/s Loften Aluminium (Hong Kong) Limited**

75. During the POI, it is noted that M/s Loften Aluminium (Hong Kong) Limited had exported \*\*\* MTs of the subject goods produced by its two related companies namely M/s Qingdao Loften Aluminium Foil Co. Ltd \*\*\* MTs and M/s Loften Environmental Technology Co. Ltd. \*\*\*MTs.
76. The export sales of Loften Aluminium (Hong Kong) Limited are on CIF/FOB/CNF basis and are on TT/LC/COD terms. The Company has claimed expenses towards inland transportation and Ocean Freight, Port handling charges, credit expenses and bank charges, wherever applicable for adjustment to arrive at ex- factory export price. The dumping margin of the above exporting and/or producer for their direct as well as indirect exports have been worked out as mentioned in the dumping margin table.

### **Export price of Zhejiang Zhongjin Aluminium Industry Co. Ltd**

77. During the examination of the response, it was noted that the above producer/exporter exported \*\*\*MT of aluminium foil to India during the POI.

78. The Company has claimed expenses towards inland transportation and Ocean Freight, Port handling charges, credit expenses and bank charges, wherever applicable for adjustment to arrive at ex- factory export price. The dumping margin of the above exporting and/or producer for their direct as well as indirect exports have been worked out as mentioned in the dumping margin table.

### **Export price of Jiangsu AlchaAluminum Co. Ltd., China (Producer) and Alcha International Holdings Limited, Hong Kong (Exporter)**

79. The data/information furnished by the Company was analysed by the Authority. It is noted that, the extent of cooperation with the Authority with respect to the subject goods exported by this group is within the scope of the exclusions mentioned above. It is as follows :

*Aluminium- Manganese- Silicon based and/ or clad Aluminium- Manganese- Silicon based alloys, whether clad or unclad: with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.*

This is excluded from the scope of product under consideration for the purposes of the present investigation. Therefore, the information filed in the questionnaire response filed by Jiangsu AlchaAluminum Co. Ltd., China (Producer) and Alcha International Holdings Limited, Hong Kong (Exporter) is not relevant for the purposes of the present investigation and no export price has been determined for the same.

### **Export price of Zhejiang GKO New Material Co. Ltd.**

In the present investigation, “Zhejiang GKO New Materials Co Ltd” has filed Exporter questionnaire response.

It is noted that the exporter failed to provide relevant information in their exporter questionnaire despite opportunities provided by the Authority. Further, one of the related company namely “\*\*\*.” (hereinafter “Aluminium Stock”) is engaged in production and sale of the subject goods. The exporter claimed that the related company, “Aluminium Stock” has not exported the product to India during POI. However, no information to substantiate the same has been provided by the exporter. Further, some partial information has been filed by the exporter at significantly belated stage of the proceeding even after the second hearing. Consequently, and in view of the above position, the Authority does not determine individual export price and does not grant individual margins to Zhejiang GKO New Materials Co Ltd, China PR.

### **All other Producers/Exporters from China PR**

80. The Authority notes that no other producer/exporter from China PR has responded to the Authority in the present investigation. For all the non-cooperative producer/exporter from China PR, the Authority determined their export price on the basis of best available information as mentioned in the dumping margin table.

## F. Determination of Dumping Margin

81. The export price to India (net of all the adjustments claimed by the exporter and accepted by the Authority) have been compared with the normal value to determine dumping margin. The dumping margin during the POI for all exporters/producers from subject country has been determined as provided in the table below:

**Table-3**

<b>DUMPING MARGIN TABLE</b>					
Producer	Exporter	Normal value	Export price	Dumping Margin	Dumping Margin %
Zhejiang Zhongjin Aluminium Industry Co. Ltd	Zhejiang Zhongjin Aluminium Industry Co. Ltd	***	***	***	50-60
Qingdao Loften Aluminium Foil Co. Ltd.  Loften Environmental Technology Co. Ltd.	Loften Aluminium (Hong Kong) Limited	***	***	***	50-60
Hangzhou Five Star Aluminium Company Limited,  Jiangsu Dingsheng New Materials Joint-Stock Co Ltd.,  Hangzhou Dingsheng Import & Export Co. Ltd.,	Hangzhou Dingsheng Import & Export Co., Ltd.  Dingsheng Aluminium Industries (Hong Kong) Trading Company Limited  Jiangsu Dingsheng New Materials Joint-Stock Co Ltd.,	***	***	***	20-30

Residual other	***	***	***	60-70
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## **G. INJURY AND CAUSAL LINK**

### **Submissions by exporter, importer and other interested parties**

82. The following submissions were made by producers/exporters/importers/other interested parties with regard to injury to the domestic industry:

- i. There is a difference between the actual production capacity of the petitioner and publicly available data. The petitioner's capacity in base year 2011-2012 has increased from 100 points to 114 during the POI.
- ii. The domestic industry has used its capacities to produce non PUC to a good extent and has not declared it. The Domestic Industry seems to have utilized its capacity to a large extent but have not declared the same.
- iii. The petitioners have been unable to establish any injury being suffered by them due to imports. Their own data shows that they lack the capacity to meet the domestic demand.
- iv. There is a difference between the production process of the subject good of exporters and the Domestic Industries leading to increase in the cost of production by INR \*\*\*/MT. Hindalco may be asked for its data as their plant is new and hi-tech.
- v. There's acute demand supply gap. Even if the industry run in 100% capacity utilization it will not be able to cater the demand of the industry. The demand is ever increasing, it increased by 25% as compared to the base year and industry is not able to meet the increased demand. Demand will increase more in coming years. So import is done due to non-availability of goods in the domestic industry. Even if the domestic industry were functioning at full capacity, the domestic industry would be able to meet only \*\*\* of the total demand. During the POI the demand supply gap was at \*\*\*%.
- vi. Domestic industry has been able to maintain its share in the market on consistent basis over the injury period as it was 21.70% during 2011-12 and it was 21.02% during POI, a marginal decline only. It is further stated that the domestic industry has failed to produce the subject goods in accordance with quality and technical specification as are required by the end users. Therefore, the importers are compelled to import the same.
- vii. It is clear that there had been no injury to the domestic industry on account of the volume of the production. There's no price effect.

- viii. Import price has been steadily rising and has slightly come down on account of fluctuation of the prices of raw material etc. The domestic industry has not suffered injury on this account. The determination of price undercutting is unfounded as the same is in contradiction with the financial results being reflected in the annual reports of the companies.
- ix. Price underselling analysis cannot be used for as factor in determining that the domestic industry is suffering injury. It becomes relevant when it is determined that the domestic industry is suffering material injury and the amount of duty is to be determined.
- x. There is no price suppression and price depression as the production and sale of the domestic industry has been increasing on regular basis and the financial results of the companies are showing reasonable profits. Further the data provided is distorted.
- xi. There have been baseless adjustments made while determining the export price for exporters from China PR. The actual at of the exporter must be considered by the authority.
- xii. No injury has been caused to the domestic industry on account of capacity utilization, production and domestic sales. Profitability of the industry has decreased due to internal issues. Decline in profitability is linked to the depreciation cost, internal expenses and policy decision of the petitioner. If injury is due to high depreciation cost, duty cannot be imposed. Analysis of all the companies individually makes it clear that all the companies increased their depreciation by leaps and bounds.
- xiii. Profits, Cash Profits and Return on Capital Employed have been arrived at by distorting the facts as against the profitability of the domestic producers as is being reflected in their respective annual reports.
- xiv. The Domestic Industry was performing negatively whether the duty was in place or not. This indicates presence of some internal issues. There has to be a reason why the company is suffering losses in the foil sector.
- xv. There is absence of causal link between dumping and injury.
- xvi. Hindalco Industries have got many divisions in the Aluminium chain starting from Ingot to the PUC. There are chances that Hindalco is transferring its price of PUC to ingot to the sheet stage etc. So they can show losses in PUC instead of Ingot or Sheet Division. So claim of injury stands disputed.
- xvii. A lot of consumers have shifted from Aluminium container to plastic container so that cannot be determined for Injury.

- xviii. The data provided by the Domestic Industry is distorted and erroneous to show COP, NSR and profitability and price effects.
- xix. The production process of the product under consideration of the domestic industry is different than the exporters.
- xx. There is no decline in the economic parameters relating to domestic industry. There is no decline in sales, production and sales value. There is increase in capacity and capacity utilization. There has been a significant increase in the net fixed assets but however, there has been no corresponding increase in the capacity in 2013-14 as compared to the previous year.
- xxi. Stock/ Inventories, Employment and wages and Growth-There had been no injury to the domestic industry on account of these parameters. Rather, the domestic industry itself has reduced its installed capacity during 2013-14 from 59, 281 MT to MT during 2013-14.

### **Submissions by Domestic industry**

83. The domestic industry has *inter alia* made the following submissions with regard to the injury and causal link:

- i. Imports from subject country have increased considerably since the base year. Import volume from subject country have increased as compared to imports from other countries and also when compared to Indian production.
- ii. Since there is significant difference in cost and price between different types of Aluminium foils, the petitioners have determined separate price undercutting for each type of the subject goods imported into India. The weighted average import prices (after including basic customs duties) have been significantly below the selling prices of the domestic industry, thus resulting in significant price undercutting.
- iii. The imports of the subject goods are depressing the prices of the domestic industry.
- iv. The demand for the product under consideration is far higher than what the domestic industry can produce and sell. Therefore, the domestic industry should have achieved much higher level of capacity utilization. However, the capacity utilization of the domestic industry was at considerably low levels due to dumping of the product in the country. Further, whatever volumes were sold by the domestic industry, the same had to be sold at significantly loss making prices. The domestic industry has suffered both adverse volume and price effect.
- v. Market share of Indian producers has declined significantly over the period. Further, market share of other countries in total imports, have also decreased over the injury

period. Despite increase in demand and commencement of fresh capacities, domestic industry is unable to increase its market share.

- vi. The domestic industry has been suffering financial losses since 2012-13 and such losses are increasing with the increase in dumped imports. The dumped imports are adversely affecting the cash profits of the domestic industry. The cash profits have severely declined over the period to the extent that the domestic industry suffered significant cash losses during the POI. Return on capital employed has deteriorated substantially and became negative since 2012-13. Return declined significantly in POI.
- vii. The decline in profits is far higher than the increase in depreciation and interest costs. Moreover, it is not understood how increase in depreciation and interest costs falls in the category of "other factors". On one hand, consumers have contended that the domestic industry had an obsolete plant. On other hand, consumers are contending that the interest cost and depreciation costs have increased. If the industry had an old plant, it is natural that its replacement would lead to increase in depreciation and interest costs.
- viii. The domestic industry is holding significant levels of inventories of the product under consideration which has increased significantly over the injury period.
- ix. Both dumping margin and injury margin for the subject country is not only more than de-minimis but also substantial.
- x. The production facility for the PUC cannot be used for making other products. As far as production facilities for the product under consideration are concerned, these are in fact dedicated production facilities.
- xi. No verifiable information has been provided by the interested parties while contending that production process of the exporters and domestic industry is different. Further, no verifiable information has been provided to establish that the alleged difference means a difference in cost of production by Rs. \*\*\* pmt. The statement is based on presumptions and assumptions without any verifiable information/evidence.
- xii. It is a well settled principle of law that the domestic industry needs to be seen as it exists.
- xiii. The annual reports do not contain information on the product under consideration but it shows the performance of the company as a whole which involves various other products and thus cannot be relied upon. The petitioners have provided actual figures to the Authority, which the Authority may adequately and appropriately verify.

xiv. As regards the claim of the interested parties that there are chances that Hindalco is transferring its price of the product under consideration to ingot to the sheet stage etc., the authority shall consider records maintained by the company. If the records maintained by the company are on the basis of cost of production, the authority shall allow a reasonable profit thereon.

xv. It is by now a well settled principle of law that demand-supply gap is not a ground for non imposition of anti dumping duty. Imposition of anti dumping duty is against the unfair trade practice being practiced by the exporters and aims at providing a level playing field to the domestic industry. It does not bar imports. Further, as stated earlier the domestic industry is producing and supplying all types of aluminum foil. Thus, exclusion of any product type from the scope of PUC and consequently from the imports data does not arise.

xvi. The petition clearly establishes that imports are undercutting the prices of the domestic industry in the market and that imports were suppressing and depressing the prices of domestic industry. Whereas cost of production has increased over the period, the import prices have declined in the POI. Further, while import price did increase upto 2013-14, the increase in the import price was far lower than the increase in cost of production.

xvii. Increase or reduction in interest, depreciation or any other such costs has no relevance whatsoever to ability or inability of a company to increase its selling price. While increase in depreciation and interest cost forces the company to increase the price, it does not have any impact on its ability. The ability to increase or reduce the price is dependent on dumping of product in the country and not on increase or reduction in interest, depreciation or any other such cost.

xviii. The Authority has been considering price underselling as an important factor of injury. Furthermore, as stated by the interested parties, the price underselling calculation is required to determine the duty amount, i.e., the amount required to counter injury being caused by dumped imports. Thus, the calculation actually shows the injury being suffered by the industry. Positive underselling thus shows injury actually being suffered by the domestic industry. Other jurisdictions also consider this parameter as a parameter establishing injury to the domestic industry.

xix. The injury margin determined by the petitioners is \*\*\* in the POI. Thus, increase in customs duty by \*\*\* in theory implies reduction in injury margin by the proportionate extent. The injury margin in any case continues to be extremely significant.

xx. In order to satisfy the requirement of standing, it needs to be shown that the application has support of those producers whose collective production constitutes more than 50% of the total production in India. Thus Authority has rightly considered PG Foil's share of production in considering standing.

## **Examination by the Authority**

84. The Authority has taken note of submissions made by the interested parties. The Authority has examined the injury to the domestic industry in accordance with the Antidumping Rules and considering the submissions made by the other interested parties.
85. Regarding argument of difference in data provided by the petitioners and that available publically, it is noted that the findings of the Authority is based on the verified data. Further, public statements do not alter the conclusion based on verified data by the Authority.
86. As regards the submission of difference in production process, it is noted the difference in the process employed does not lead to different products, unless the resultant grades of products themselves differ in terms of essential product properties. Further, it is noted that while imposing anti-dumping duty the position that has to be considered is not in the context of ideal conditions but in the specific circumstances of the domestic industry.
87. As regards the submissions of absence of injury, the injury analysis carried out hereunder is self explanatory to establish that the dumping has caused injury to the domestic industry.
88. Regarding argument that the petitioner companies are using capacities for producing non PUC, it is noted that during the verification conducted by the Authority, it was found that the capacities for production of the product concern is dedicated. Hence, the argument by the interested party is incorrect.
89. As regards the argument of extra protection of 2.5% increase in basic custom duty, the Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market. Increase in custom duty cannot be the basis to allow the unfair trade practices of dumping in the Country.
90. As regards the argument of shift in demand to plastic container, it is noted that the demand of product under consideration has increased significantly over the injury period.
91. As regards the argument that the losses are due to other products, the Authority notes that the performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the domestic industry's performance. The information considered by the Authority is with respect to the product under consideration only.

92. Regarding the argument that suppression and depression is because of increase in interests and depreciation, it is noted that the Authority proceeded with the analysis after factoring the impact of increase in depreciation and interest. It was found that the imports from subject country still is suppressing and depressing the prices of the domestic industry.

93. Further, public statements like annual reports of companies do not alter the conclusion that dumping of the product has contributed to injury to the domestic industry.

94. As regards the submission that separate injury analysis is required, the Authority notes that as per the Anti-dumping Rules, injury is required to be determined for the domestic industry as a whole. Regarding the argument that profitability is because of increase in interests and depreciation cost, it is noted that the Authority analysed after factoring the impact of increase in depreciation and interest. It was found that the imports from subject country are negatively affecting the profitability of the domestic industry.

95. The submissions made by the domestic industry and other interested parties during the course of investigations with regard to injury and causal link and considered relevant by the Authority are examined and addressed as below:

96. The AD Rules require the Authority to examine injury by examining both volume and price effect. A determination of injury involves an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for the like article and (b) the consequent impact of these imports on domestic industry. With regard to the volume of dumped imports, the Authority is required to consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of 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.

97. As regards the consequent impact of dumped imports on the domestic industry, Para (iv) of Annexure II of Antidumping rules states as under:-

(iv) *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 the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.*

98. It is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration; while some may show improvement. The Designated Authority considers all injury parameters and thereafter concludes whether the domestic

industry has suffered injury due to dumping or not. The Authority has examined the injury parameters objectively taking into account the facts and arguments in the submissions.

99. Authority notes that information has been provided in respect of like article to the extent feasible and separately available. Since some of the Petitioner companies are multi-product companies, the Authority has relied on the information with regard product under consideration and on the basis of records maintained by the Petitioner companies. The published financial results of the Petitioner companies are of no relevance in this regard, as this information does not pertain to product under consideration alone and relate to overall performance of these companies.

### **Assessment of Demand**

100. The demand of the product under consideration in India has been determined as the sum of sales of the Indian producers and imports from all sources. The Authority notes that the demand of the product under consideration has increased over the injury period.

**Table-4**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
Sales of domestic Industry	MT	14,259	12,737	12,551	16,037
<i>Trend</i>	<i>Indexed</i>	100	89	88	112
Sale of Other Indian producers	MT	13,446	12,552	13,500	14,892
<i>Trend</i>	<i>Indexed</i>	100	93	100	111
Total Domestic Sales	MT	27,705	25,289	26,051	30,929
<i>Trend</i>	<i>Indexed</i>	100	91	94	112
Imports- Subject Country	MT	37,953	40,740	45,499	60,911
<i>Trend</i>	<i>Indexed</i>	100	107	120	160
Imports- Other Countries	MT	13,182	7,316	8,349	8,284
<i>Trend</i>	<i>Indexed</i>	100	56	63	63
Total Demand	MT	78,839	73,345	79,899	100,124
<i>Trend</i>	<i>Indexed</i>	100	93	101	127

### **Volume Effect of Dumped Imports and Impact on Domestic Industry**

#### **Import Volume and Market Share**

101. With regard to 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 good from the subject country have been analyzed as under:

**Table-5**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
<b>Import Volume</b>					
Subject Country - China	MT	37,953	40,740	45,499	60,911
<i>Trend</i>	<i>Indexed</i>	100	107	120	160
Other Countries	MT	13,182	7,316	8,349	8,284
<i>Trend</i>	<i>Indexed</i>	100	56	63	63
Total Imports	MT	51,134	48,056	53,848	69,195
<b>Market Share</b>					
Subject Country - China	%	74	85	84	88
Other Countries	%	26	15	16	12
Total Imports	%	100	100	100	100
Imports from Subject Country in relation to Demand	%	48	56	57	61
Imports from Subject Country in relation to Indian Production	%	97	108	115	144

102. It is noted that that

- i. the volume of imports from subject country have increased in absolute terms over the injury period.
- ii. Imports from subject country have increased in relation to total imports of product under consideration in India.
- iii. Imports from subject country have increased in relation to production and consumption in India over the injury period.

#### **Price Effect of the Dumped imports on the Domestic Industry**

##### **Price Undercutting**

103. With regard to the effect of dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports when 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.

104. In order to determine whether 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. For the purpose, the

Authority notes that there is significant difference in the prices of different types of the product under consideration. Therefore, the Authority has compared landed price of imports with the selling price of the domestic industry for comparable types. Thus, weighted average price undercutting has been determined after considering associated import volumes. This comparison showed that during the period of investigation, the subject goods originating in the subject country were imported into the Indian market at prices which were lower than the selling prices of the domestic industry. It is thus noted that imports of subject goods were undercutting the domestic prices and margin of undercutting is shown as per the table below:

**Table-6**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
Landed price of Imports	Rs./Kg.	190.68	205.47	213.84	209.33
Trend		100	108	112	110
Net Sales Realization	Rs./Kg.	***	***	***	***
Trend		100	100	101	102
Price Undercutting	Rs./Kg.	***	***	***	***
Trend		100	31	3	38
Price Undercutting	%	***	***	***	***
Price Undercutting	% Range	10-20	0-10	0-10	0-10

### **Price underselling**

105. The Authority has also examined price underselling suffered by the domestic industry on account of dumped imports from China PR. For this purpose, the NIP determined for the domestic industry has been compared with the landed price of imports for each product type. Comparison of weighted average NIP of the domestic industry with weighted average landed price of imports shows as follows:

**Table-7**

Particulars	Unit	Amount in Rs.
		China PR
Landed Price of Imports	Rs./Kg.	209.33
Non Injurious Price	Rs./Kg.	***
Price Underselling	Rs./Kg.	***
Landed Price of Imports	\$/Kg.	3.37
Non Injurious Price	\$/Kg.	***
Price Underselling	\$/Kg.	***
Price Underselling	%	***
Price Underselling	% Range	20-30

It is seen that the landed price of the subject goods from China were significantly lower than the NIP determined for the domestic industry.

#### **Price Suppression/Depression**

106. In order to determine whether the dumped imports are suppressing or 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 position is shown as per the table below:

**Table-8**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualized
Landed Price of Imports	Rs./Kg.	190.68	205.47	213.84	209.33
<i>Trend</i>	<i>Indexed</i>	100	108	112	110
Cost of Production	Rs./Kg.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	111	132	132
Selling Price	Rs./Kg.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	101	102

It is seen that costs of the domestic industry increased over the injury period but the selling price of the domestic industry has not increased in proportion to increase in cost. The imports were thus suppressing the prices of the domestic industry in the market and prevent in the price increases that would have otherwise occurred.

#### **J. Economic Parameters Relating to the Domestic Industry**

107. Annexure II to the AD Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the AD 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.

108. Accordingly, various economic parameters of the Domestic Industry are analyzed herein below.

#### **H. Sales, Capacity, Production, and Capacity Utilization**

109. The performance of the domestic industry with regard to production, domestic sales, capacity & capacity utilization was as follows:

## Capacity, Production, Capacity utilization & Sales

**Table-9**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
Installed Capacity	MT	34,000	53,031	36,754	36,754
<i>Trend</i>	<i>Indexed</i>	100	156	108	108
Production	MT	15,532	14,677	13,283	17,077
<i>Trend</i>	<i>Indexed</i>	100	94	86	110
Capacity utilization	%	46%	28%	36%	46%
<i>Trend</i>	<i>Indexed</i>	100	61	79	102
Domestic Sales	MT	14,259	12,737	12,551	16,037
<i>Trend</i>	<i>Indexed</i>	100	89	88	112
Demand	MT	78,839	73,345	79,899	100,124
<i>Trend</i>	<i>Indexed</i>	100	93	101	127

110. Authority notes that the capacity, production and sales of the domestic industry have increased. However, the increase in production and sales is far lower than increase in demand of the product under consideration in India. The demand of the product under consideration in India has increased by 27% as compared to 10% and 12% of increase in production and sales respectively. The domestic industry is unable to increase the Capacity utilization of the domestic industry has not increased since the base year.

### **II. Market Share in Demand**

111. The effects of the dumped imports on the market share of the domestic industry have been examined as below:

**Table-10**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
Domestic Industry	%	18	17	16	16
Other Indian Producers	%	17	17	17	15
Indian Producers as a whole	%	35	34	33	31
Subject Country	%	48	56	57	61
Other Countries	%	17	10	10	8

112. It is noted that market share of the domestic industry has slightly dropped in the POI as compared to the base year whereas market share of the subject country has increased over the injury period. Market share of Indian producers has declined significantly over the period. Further, market share of other countries have also decreased over the injury period. Considering the positive price undercutting and increase in market share of China, it is concluded that the market share of the domestic industry has declined as a direct result of dumped imports from China PR.

### **III. Profit/Loss, Cash Flow, Return on Capital Employed**

113. The profit/loss, cash profits and return on investment of the domestic industry has been analysed as follows:

**Table-11**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
Cost of Sales	Rs./Kg.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	111	132	132
Selling Price	Rs./Kg.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	101	102
Profit/Loss	Rs./Kg.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	-318	-1,041	-965
Profit/Loss	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	-280	-908	-1,078
PBIT	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	-77	-358	-365
Cash Profit	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	-104	-384	-446
Return on Investment	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	-23	-81	-102

114. The Authority notes that the domestic industry has earned profit in the base year. However, the profitability of the domestic industry deteriorated significantly thereafter and the domestic industry suffered financial losses which increased in the POI. Return on investment over the injury period has shown the same trend as that of profits. Profit before interest and taxes (PBIT) has declined to negative levels. The return on investment (ROI) for the domestic industry declined to negative levels. Cash profits have also shown the same trend as that of profits. Cash profits declined since base year with a significant deterioration in the investigation period.

#### **IV. Employment and Wages**

115. The position with regard to employment, wages and productivity is as follows:

**Table-12**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
Employment	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	109	68	83
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	107	76	91
Productivity per employee	MT/Nos	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	87	125	133

116. It is noted that the employment levels of the domestic industry has declined in 2013-14 and increase during period of investigation. Wages paid have shown the same trend. Productivity of the domestic industry has increased.

#### **V. Inventories**

117. The data relating to inventory of the subject goods are shown in the following table:

**Table-13**

Particulars	Unit	2011-12	2012-13	2013-14	POI Annualised
Opening	MT	***	***	***	***
Closing	MT	***	***	***	***
Average	MT	***	***	***	***
Trend	Indexed	100	284	475	521

118. It is seen that inventories with the domestic industry have increased throughout the injury period. The inventory has increased by around 500% during POI as compared to the base year.

#### **VI. Growth**

**Table-14**

Growth from Base Year	Unit	2011-12	2012-13	2013-14	POI Annualised
Production	MT	-	-855	-2,249	1,545
<i>Trend</i>	%	-	-6	-14	10
Domestic Sales Volume	MT	-	-1,661	-1,806	1,663
<i>Trend</i>	%	-	-12	-13	12
Cost of Sales	Rs/Kg.	-	***	***	***
<i>Trend</i>	%	-	11	32	32
Selling Price	Rs/Kg.	-	***	***	***
<i>Trend</i>	%	-	-0	1	2
Profit/ Loss	Rs/Kg.	-	***	***	***
<i>Trend</i>	%	-	-418	-1,141	-1,065
ROI	%	-	***	***	***
<i>Trend</i>	%	-	-123	-181	-202
Cash Profits	Rs. Lacs	-	***	***	***
<i>Trend</i>	%	-	-204	-484	-546

119. The Authority notes that growth of the domestic industry with regard to production, domestic sales was positive during period of investigation. The growth with respect to

selling price, profit, ROI and cash profit was negative, despite positive growth in demand for the product in the Country. On the whole, the growth of the domestic industry has been negative over the injury period.

#### **Ability to raise capital investment**

120. The Authority notes that the performance of the domestic industry has deteriorated considerably which has affected its ability to raise capital

#### **Level of dumping& dumping margin**

121. It is noted that subject country imports are entering the country at dumped prices and that the margin of dumping is significant.

### **VIII. Factors affecting prices**

122. The examination of the import prices from the subject country, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc shows that the landed value of imported material from the subject country is below the selling price and the non-injurious price of the domestic industry, causing significant price undercutting as well as price underselling in the Indian market. Thus, the factor affecting the domestic prices is landed value of subject goods from subject country.

### **IX. Conclusion on Injury**

123. It is thus seen that there has been a significant increase in the volume of dumped imports from subject country in absolute terms. The imports have increased significantly in relation to consumption and production of the product in India. Imports have thus increased both in absolute terms and in relation to production and consumption in India. The dumped imports are undercutting the prices of the domestic industry in the market. Dumped imports have had significant adverse price effect in terms of price suppression. Effect of dumped imports has been to prevent price increase which otherwise would have occurred, to a significant degree. The domestic industry is suffering significant price underselling. The dumping margin determined by the Authority is quite significant. With regard to consequent impact of dumped imports on the domestic industry, it is noted that dumped imports from China have adversely impacted the performance of the domestic industry in respect of production, domestic sales, capacity utilization, inventories, market share, profits, cash profits and return on investment. Whereas the demand for the product under consideration has increased over the injury period and its production, sales volumes, capacity utilisation and market share has not increase in proportion to increase in demand. Inventories with the domestic industry increased. Further, as a result of significant price undercutting and suppression, profitability of the domestic industry deteriorated so significantly that the domestic industry was suffering significant financial losses. Further, the domestic industry

suffered cash losses and negative return on investment during the POI. The Authority concludes that the domestic industry has suffered material injury.

#### **K. CAUSAL LINK**

124. The Authority has examined other factors listed under the Antidumping Rules which could have contributed to injury to the domestic industry for examination of causal link between dumping and material injury to the domestic industry.

#### **I. Imports from third countries**

125. The Authority has examined the imports data of the subject goods from DGCI&S. It is noted that imports from third countries are negligible and could not have caused claimed injury to the domestic industry

#### **II. Contraction in demand**

126. There has been rise in demand of the product concerned over the injury period. Possible decline in demand could not have caused injury to the domestic industry.

#### **III. Changes in the patterns of consumption**

127. The pattern of consumption with regard to the product under consideration has not undergone any material change. Therefore, changes in the pattern of consumption cannot be considered to have caused injury to the Domestic Industry.

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

128. There is no trade restrictive practice, which could have contributed to the injury to the Domestic Industry.

#### **V. Developments in technology**

129. Technology for production of the product concerned has not undergone any change. Thus, developments in technology cannot be regarded as a factor causing injury to the domestic industry.

#### **VI. Export performance**

130. The performance of the domestic industry and injury there to has been examined with respect to the domestic performance to the extent possible. Possible deterioration in the export performance of the domestic industry is, therefore, not a possible cause of injury to the domestic industry.

#### **VII. Performance of the domestic industry with respect to other products**

131. The Authority notes that the performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the domestic industry's performance. The information considered by the Authority is with respect to the product under consideration only.

### **VIII. Productivity of the domestic industry**

132. The Authority notes that the productivity of the domestic industry has followed the same trend as production. Deterioration in productivity is not a cause of injury to the domestic industry.

### **L. Factors establishing causal link**

133. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has deteriorated due to dumped imports from subject country. Causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- a) Imports are undercutting the prices of the domestic industry. The volume of imports has increased significantly.
- b) The price undercutting has led to significant increase in market share of imports and decline in market share of the Indian industry.
- c) The presence of dumped imports in the country is suppressing the prices of the domestic industry despite increase in cost.
- d) The subject imports are underselling the product sold by the domestic industry.
- e) Deterioration in profits, return on capital employed and cash profits is a direct consequence of dumped imports.
- f) As a result of significant price undercutting, production, sales and capacity utilisation of the domestic industry has not increased in proportion to increase in demand
- g) The growth of the domestic industry became negative in terms of a number of price and volume related economic parameters.

The Authority is of the view that material injury to the domestic industry has been caused by dumped imports

### **M. Magnitude of Injury Margin**

134. The non-injurious price of the subject goods produced by the domestic industry determined has been compared with the landed value of the exports from the subject country for determination of injury margin during POI. The injury margin determined are as under:-

**Table-15**

<b>INJURY MARGIN TABLE</b>					
Producer	Exporter	NIP	Landed Value	Injury Margin	Injury Margin %
1. Zhejiang Zhongjin	1. Zhejiang	***	***	***	50-60

Aluminium Industry Co. Ltd	Zhongjin Aluminium Industry Co. Ltd				
1. M/s Qingdao Loften Aluminium Foil Co. Ltd	1. Loften Aluminium (Hong Kong) Limited	***	***	***	40-50
2. M/s Loften Environmental Technology Co. Ltd.					
1. M/s Hangzhou Five Star Aluminium Company Limited,	1. Hangzhou Dingsheng Import & Export Co., Ltd.	***	***	***	20-30
2. M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd.,	2. Jiangsu Dingsheng New Materials Joint-Stock Co. Ltd.				
3. M/s Hangzhou Dingsheng Import & Export Co. Ltd.	3. Dingsheng Aluminium Industries (Hong Kong) Trading Company Limited				
Residual other		***	***	***	50-60

#### **N. Post disclosure Comments**

135. Following comments have been made by various interested parties i.e Domestic Industry, Zhejiang GKO New material China, Svan Packaging, Bilcare Research, Zhejiang GKO New material China, Indian Flexible packaging and Folding Carton Manufacturers association, Hangzhou Five Star Aluminium Co Ltd, Jiangsu Dingsheng New Material joint stock, Hangzhou Dingsheng Import and Export Co Ltd, Dingsheng Aluminium Industries (Hong Kong) Trading co Ltd., Veeram Natural Products, Jiangsu Zhongji Lamination Material o Ltd, M/s Zhejiang Zhongjin Aluminium Industry Co. Ltd Zhejiang GKO New material China, Jiangsu Alcha Aluminium Co Ltd , Alcha International Holdings Ltd, UP Twiga Fiberglass Ltd, Mahle Behr India Private Limited, Nagreeka Indcon Products (P) Ltd, India Overseas Exports Pvt. Ltd, Nagreeka Synthetic Pvt Ltd, Nagreeka Foils Ltd, International Traders, Flora Industries, Scraft Products Pvt Ltd, Purple Incorporation, Rockdue Impex, Qingdao Loften Aluminium Foil Co, Loften environmental technology Co Ltd, Loften Aluminium (Hong Kong) Ltd and Ploycom Associates in response to the disclosure

#### **Submissions by exporter, importer and other interested parties**

136. The following submissions were made by producers/exporters/importers/other interested parties

- i. The interested parties have repeated their contentions with regard to exclusion of product types. Goods that require exclusion are
  - a. House Hold Foil, thickness between 9 microns to 18 microns in Alloy AA 8011
  - b. Semi rigid container foil or Aluminium foil Container thickness between 34 microns and 80 microns made from Alloy 3003
- ii. The interested parties have requested for the exclusion of House hold Foil thickness between 9 micron to 18 micron in Alloy AA8011 and semi rigid container and aluminium foil container thickness between 34 micron and 80 micron made from Alloy 3003.
- iii. The product for which exclusion sought is neither like article or produced by the domestic industry and they are not even substitutable.
- iv. Blanket dealing of issues is unjustified and the Authority is requested to examine the issue in specific and in detail.
- v. Injury to the domestic industry is self inflicted due to high cost of production and obsolete technology and process adopted.
- vi. Injury to the domestic industry is self inflicted due to high cost of production and obsolete technology and process adopted.
- vii. No necessary clarification like product scope, consolidated injury analysis for the POI were given to the interested parties.
- viii. The Authority has not dealt with the cases cited by the Exporters such as Vitrified Tiles Provisional Findings, SDH Final Findings, and Purified Terephthalic Acid final findings.
- ix. Authority is requested to provide PCN to PCN calculation of dumping margin.
- x. The Authority has considered raw material prices of the domestic industry to construe normal price for China but has not taken international prices for major raw material for construing normal value for China. As a general practice the Authority adopts international prices for determining the normal value but the in the instant investigation the Authority has taken input given by the Authority. Authority may explain the reason for doing so.
- xi. The authority may provide constructed normal value and dumping margin calculation for the PCN exported by exporters in India.
- xii. The Authority may kindly give a hearing to the interested parties.
- xiii. There's very few imports of aluminium foil 45-60 micron using Alloy 8021 so it will no way harm the domestic industry.
- xiv. Alu Alu laminate should be included under the scope of the product under consideration because the same is being imported from Korea on paying 0% duty, which is harmful for the industry.
- xv. Alu ALu Stock 45-60 micron in thickness of 900-1170 is not manufactured and supplied by even a single producer of domestic industry.
- xvi. AluAlu laminate is already coming from Korea duty free due to FTA. If the duty is imposed on the major raw material the entire industry of AluAlu laminate will shut down.
- xvii. The proposed oral hearing was cancelled due to appointment of a new Designated Authority and no intimation was given with regard to rescheduling of hearing.
- xviii. Zhejiang GKO New material China has fully cooperated with the investigation and has asked the Authority if Aluminium Stock should file a questionnaire response but the Authority did not reply on the same. The Authority has wrongly held that despite several

opportunities the exporter did not furnish relevant information. Authority should examine the response filed by the exporter and give individual dumping margin

ix. Though the exporter's (Jiangsu Zhongji Lamination Material Co Ltd) name is not there in the known exporters but the exporter has been careful enough to provide all the documents and information to the Authority. The Exporter has provided all the account break sheet and has provided all the information. There is no reason why the exporter's name should not be in the list of cooperative exporter.

xx. The Authority has rejected the request to exclude aluminium foil less than 7 micron on the ground that the domestic industry is manufacturing the PUC. Authority has treated the invoices given by the domestic industry as confidential whereas the other interested parties were directed to provide the invoices as an evidence of the goods supplied and the same was provided by the other interested parties.

xxi. The Authority should examine on the monthly basis the number of ordered placed and the orders rejected by the consumers.

xxii. The Authority should make the invoices non confidential and provide the same to the other interested parties.

xxiii. Regarding the issue of pinhole it the internal report of the Chinese producers, it shows that the pinhole count in the goods supplied by them is not more than 100-200. If the product supplied has more than prescribed pinholes the product becomes unusable. It spoils the purpose of packaging and makes the food stale.

xxiv. Aluminium foil of 1800 mm cannot be used in the machine of aluminium foil used for smaller width. 1800 mm is not imported in the present but is expected to be imported in future. At present the imports are upto 1614 mm only. The domestic industry does not have the capability to produce aluminium foil of high width because the domestic industry has width restriction. Accordingly aluminium foil of high width should not be excluded.

xxv. The aluminium foil produced and supplied by the domestic industry has serious quality issues.

xxvi. The new machines acquired by M/s Hindalco are second hand machines of Novelis and Hindalco has got it after acquiring Novelis. Even if the machines are taken as new, any new machinery will take one to two years to be fully operational. So the demand supply gap cannot be filled up immediately.

xxvii. The capacity shown is not only for ULG but for other types of goods as well. It needs to be checked that whether the domestic industry is capable of making ultra light gauge.

xxviii. Aluminium foil below 7 micron should be excluded from the scope of Product under consideration.

xxix. The domestic industry has been cherry picked. The other producers, which consist of 59% of the producers, are performing very well including the supporter P G foils.

xxx. The Authority should use the international prices .e. LME prices, to compute normal value.

xxxi. Taking international prices for computation of normal value has been a well adopted practice of the Authority. There's no reason the Authority should use the domestic industry input cost.

xxxii. Authority has failed to disclose if it has factored the high interest rate of the domestic industry in order to determine the normal value.

- xxxiii. Most of the data related to injury determination has been kept confidential by the Designated Authority and the same is disclosed in the petition. There are several findings where the Authority has revealed the data related to injury parameters.
- xxxiv. Especially after exclusion of Raviraj foils the other party needs to understand the data. The Authority should provide the absolute data instead of indeed one.
- xxxv. It is not clear from the disclosure statement if the Authority has used revised import data, after excluding the goods from the scope of the investigation.
- xxxvi. Injury cannot be seen merely by trends of import but it should have effect on the performance of the domestic industry.
- xxxvii. The import volumes are higher than what is shown in the petition despite exclusion of several goods from the scope of investigation.
- xxxviii. The domestic industry has been doing fairly well and has been able to increase its production and sale. The domestic industry is not able to meet the demand of the market because it has decreased its capacity by 30%.
- xxxix. The import has increased marginally as compared to the previous year but the profitability has declined steeply. There's no connection between the both.
- xl. Decline in profitability is due to other factors. The Authority has failed to declare if it has factored the increase in depreciation and interest in regard to impact of profitability as well.
- xli. There's no causal link because when the import increased in the POI and the same year production and sale of the domestic industry also increased. The domestic industry is not suffering material injury.
- xlii. The exporter thanks the Authority for excluding Clad with compatible non clad Aluminium Foil.
- xliii. The Authority is requested to take the same view while issuing the final finding.
- xliv. The Authority has excluded Aluminium foil composite. But the Authority is requested to make certain amendments in the description of the product.
- xlv. The word Aluminium foil composite should not be used because this is a general term and does not signifies the product imported by the importer.
- xlvi. The petitioner has accepted that the product imported by the importer can be excluded from the scope of the investigation.
- xlvii. The product which should be excluded is “ Aluminium foil laminated with or backed with various combinations of glass scrim and/or kraft paper and/or glass cloth with or without poly ethylene, whether printed or not printed”
- xlviii. And/or should be included before kraft paper and glass cloth. Also *backed with various combination* should be used.
- xlix. The Authority has excluded Aluminium-Manganese-Silicon based and/or clad aluminium-Manganese-Silicon based alloys, whether clad or unclad. The description of the product should be included in the list of descriptions based on the fact that at the time of customs clearance, the authorities undertake the testing of the product.
  - i. At the time of testing if the above alloy is present in the product namely aluminium manganese and/or silicon then the process is more direct.
  - ii. If the total Indian production is taken into consideration the total share of the domestic industry is only 24.5% which is less than the threshold of 25%. The Indian production is much more than what the figure is considered by the Authority. The all the figures are kept confidential which does not it feasible to make proper comment on standing.

- lii. There's no single importer who imports raw material I.e. SRC/HHF for Aluminium Foil Container (AFC) or Aluminium Foil Rolls (AFR)/.
- liii. The requirement of SRC is largely in Alloy 3003, which is not manufactured by anyone in India.
- liv. Jindal Aluminium and Gujarat Foils have clearly stated that they cannot supply SRC made up of Alloy 3003
- lv. Alloy 3003 is non-substitutable because there is serious quality concern.
- lvi. The quantity of SRC imported is very low as compared to other Product under consideration whereas 60% of the import consists of ULG.
- lvii. Domestic industry does not have the capacity to cater to the demand of the domestic market and the capacity shown of the domestic industry is exaggerated.
- lviii. Anti-dumping duty of any amount in excess to 2.5% imposed on SRC foil then it will lead to serious abnormality, where the goods will attract lower import duty.
- lix. SRC foil of thickness 34 and 80 microns made of Alloy 3003 and HHF between 9 to 18 microns in Alloy AA8011 should be excluded.
- lx. Manufacturers of Aluminium foil laminate, which is used by cable manufactures. There's only one supplier in the market of the said goods and that is Hindalco. After imposition of duty it will be very difficult because there will be only one source to buy the said god.

### **Submissions by the Domestic Industry**

137. The domestic industry inter alia submitted as follows

- i. The domestic industry requests the Authority to provide the documents such as break up of non injurious price, verification reports of exporters (non confidential version) and communications sent by the Authority to all the interested parties and their replies. The documents should be provided to the domestic industry to enable them to make relevant comments
- ii. Authority is requested to give detailed clarity on the excluded goods for the purpose of proper implementation.
- iii. The custom classification is indicative only. Only the contents of duty table are relevant. The Authority should specify in the duty table that the Product under consideration attracts duty regardless of the customs classification under which the goods are being imported.
- iv. Exclusion of M/s Raviraj not justified because it imported insignificant amount of Product under consideration. At the same time M/s Raviraj made value addition to the product and has sold it. They haven't sold the Product under consideration.
- v. Dumping margin of M/s Hangzhou Five Star Aluminium Company Limited, M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd, and M/s Hangzhou Dingsheng Import & Export Co. Ltd is very low. The Authority is requested to disclose the product type sold by the above exporter.
- vi. Determination of Non injurious price is inappropriate and against the object and intent of the dumping law. The NIP is required to be revised upwards.
- vii. Due to variety of products and different types and prices of the product the duty should be kept ad-valorem. Duty should be imposed in a manner where it does not become

futile. The anti-dumping duty is to be imposed in accordance with dumping margin and injury margin.

### **Examination by the Authority**

138. The Authority notes that post-disclosure comments/submission made by the interested parties are mostly reiterations of earlier submissions, which have already been examined suitably and adequately and properly addressed in the disclosure statement or relevant paras of the present finding. The authority further considers as follows with regard to issues raised by the interested parties.

- i. The submissions made by the interested parties during the course of this investigation have been considered by the Authority, wherever found relevant, in this finding
- ii. The Authority has decided after detailed examination and given reasons for inclusion of the products, for which exclusion was sought after relying on the facts and the evidence provided by all the interested parties including domestic industry.
- iii. It is noted that the product types are imported into India and the domestic industry is producing and supplying the like article to these product type. Different types of aluminium foils constitute one article and it would not be appropriate to exclude product types, if the domestic industry is manufacturing the like article to the product type being imported into India.
- iv. As regards exclusion of Semi rigid container foil or Aluminium foil Container thickness between 34 microns and 80 microns made from Alloy 3003, the Authority reiterates that the information on record shows that the SRC container is produced using 8006 and 8011 alloy and sold by the domestic industry at a price higher than the prices at which Semi-rigid container of 3003 alloy has been imported from China. Further, one of the consumers of SRC foil stock has bought SRC foil stock having alloy 8006 form the domestic industry and has also imported SRC foil stock having alloy 3003 from China.
- v. The interested parties have actually bought both kind of SRC foil stocks and have sold Semi-rigid containers in the market. There is sufficient evidence to show that Semi-rigid containers having 3003 alloy and SRC container having 8006 alloy have been interchangeably produced and sold by the same set of consumers. Further, no distinctive price difference between the SRC container having 3003 alloy and SRC container having 8006 alloy has been established by the interested parties. It would therefore not be appropriate to exclude SRC foil stock having 8006 alloy or SRC container having 3003 alloy from the scope of PUC. It is also noted that the domestic industry has provided evidence showing production of foil for different applications having alloy 3003. This clearly shows that the domestic industry in fact has 3003 alloy available to them for production of foils in accordance with customer's demand.
- vi. As regards the argument that injury to the domestic industry is self inflicted due to high cost of production and obsolete technology and process adopted, it is noted that the interested party has not provided any information to substantiate such claims. The injury analysis carried out by the Authority is self explanatory to establish that the dumping has caused injury to the domestic industry
- vii. As regards disclosure of PCN to PCN dumping margin, it is noted that dumping margin calculated on the basis of constructed normal value is business sensitive information of

the domestic industry and therefore cannot be disclosed. Disclosure of PCN dumping margin shall imply disclosure of cost of production of the domestic industry, which is confidential information of the domestic industry.

- viii. As regards the submissions that the Authority has not dealt with cases cited by the parties, it is noted that such cases were cited to argue the eligibility of the domestic industry and the Authority has provided detailed reasoning in the relevant paragraph of this finding.
- ix. As regards the argument that no clarification was provided by Designated Authority in the hearing about scope of the product, scope of domestic industry, the consolidated injury analysis, it is noted that as per AD Rules, the Authority is required to inform all interested parties of the essential facts under consideration which form the basis for its decision. In the instant case, the Authority has disclosed the facts under Rule 16 of the AD Rules on 14<sup>th</sup> Feb, 2017. The parties have been given opportunity to comments on the facts.
- x. As regards the methodology for determining normal value, the same has been determined as per the AD Rules
- xi. As regards price of raw material adopted for determination of normal value, the Authority has adopted best available information in this regard. None of the interested parties have been able to provide any other source of information which could be adopted for the purpose. Since a large number of different grades of aluminium stock are involved, there appeared no authentic published international prices for the same. It is also noted that aluminium prices mentioned in LME are in any case not relevant for the present purposes.
- xii. As regards the request for amendment in definition of Aluminium foil composite, it is noted that such amendment in definition will result in exclusion of a product type manufactured and supplied by domestic industry. The Authority has considered exclusion of only those product types like article of which has not been supplied by the domestic industry.
- xiii. The Authority notes that there is no provision under the Rules to mandate that hearing is required to be provided after issuance of disclosure statement. The Authority provided opportunity to all the known interested parties to present their views orally in a public hearing held on 10<sup>th</sup> May, 2016 and 4<sup>th</sup> November 2016. The parties, which presented their views orally in the public hearing, were requested to file written submissions of the views expressed orally. The interested parties were also provided opportunity to file rejoinder submissions. Moreover, none of the interested parties, while seeking hearing, brought any such cogent reasons which justify hearing at this stage.
- xiv. As regards the argument of GKO Zhejiang GKO New Material Co Ltd, the disclosure statement and the present findings contain detailed reasoning for rejecting the questionnaire response. It is further clarified that the party has not provided relevant information sought during the course of investigation. The Authority wrote a letter dated 17/10/2016, informing the consultants of GKO about the table study of their exporter questionnaire response. However, the said verification offered was incomplete and the relevant information/ supporting evidences to substantiate the claims made in the exporter questionnaire were not provided. The Authority notes that physical on the spot verification is undertaken at the discretion of the Authority. The Authority may however

seek such information and clarification as are necessary by conducting table verification and without undertaking physical verification. For instance, the company has not provided any corroborating evidence supporting adjustments claimed for export price determination. Notwithstanding, it is noted from the limited information provided by the company, that the description of the product being exported itself is ambiguous. It is observed from the examination of documents submitted that the exporter has provided information which is not limited to product under consideration (as per Appendix 2 declarations). In view of the foregoing, no individual dumping margin could be determined in respect of the said company.

xv. The Authority has held that different types of aluminium foils constitute one article. It would not be appropriate to exclude a product type, if the domestic industry is manufacturing the like article to the product being imported into India

xvi. As regards the argument of inclusion of AluAlu Laminate, it is reiterated that the petitioner has itself sought exclusion of this product type since the domestic industry is not making AluALu Laminate. It is not appropriate to impose the anti-dumping duty on a product type, when the like article is not supplied by the domestic industry and when the same was excluded from the scope of product under consideration at the stage of initiation itself. The scope of investigation and proposed measure cannot exceed the scope of the product under consideration at the stage of initiation of investigation. A domestic industry can however file a fresh petition seeking imposition of ADD on a product, if the domestic industry considered that a product is being dumped and such dumping is causing injury to the domestic industry.

xvii. As regards the argument of M/s Jiangsu Zhongji Lamination Material Co Ltd, the company has not provided information prescribed as per the exporter's questionnaire response. The company has merely provided balance sheet. In view of very limited information provided by the company, the Authority could not determine individual dumping margin for the company.

xviii. 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. Invoices are business sensitive information and therefore, cannot not be disclosed.

xix. As regards the issue of Pinholes, the authority holds that the issue has been examined and addressed in detail in the disclosure statement and the present final findings at the relevant paragraphs. The authority considers that if the government has prescribed certain standards for a product and the same are complied by the domestic industry, the consumers cannot demand that the product type produced by the domestic industry does not meet the desired standards.

xx. As regards request for exclusion of 1800 mm width material, it is noted that the interested party itself has contended that the party might import such large size foil in future. Admitted, this has not been imported during POI. The Authority notes that a request for exclusion cannot be considered unless a party establishes that it has imported the product type and the domestic industry has not supplied like article.

- xxi. The interested parties have reiterated their contention about quality of the product manufactured by the domestic industry and those imported in to India. It is reiterated that since the product manufactured by the domestic industry is held as like article to the product being imported into India and the two are used interchangeably by the users/importers, such issues raised by the interested parties without concrete evidence to establish the same, could not be applied.
- xxii. The domestic industry has provided documentary evidence in the form of commercial invoice showing product sale of ULG 5.5 Micron, Since the domestic industry has produced and supplied ULG 5.5. Micron, the claim of interested parties, that the domestic industry did not produce and supply this type of a product is factually incorrect and therefore could not be accepted.
- xxiii. As regards the contention that the domestic industry does not have sufficient capacity to meet the demand of ULG in the country, the authority notes if there is a demand supply gap in the country, the foreign producers can certainly fill the gap in the country by bringing the product at a fair price. Demand supply gap does not justify dumping of the product.
- xxiv. As regards the arguments on constitution of domestic industry, the Authority notes that as per the Anti-dumping Rules, the Authority is required to examine whether (a) domestic producers expressly supporting the application account for more than twenty five per cent of the total production of the like article by the domestic industry; and (b) the application is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application. The Authority had written a letter to the Ministry of Mines and Department of Industrial Policy and Promotion and asked for the list of producers of the subject good in India along with the data of production, capacity of production, imports of the subject goods made from the subject country, if any for the period 2011-12 to 2014-15. The letter was duly replied by the Ministry of Mines enclosing information showing the list of producers of the subject goods in India and production of the major producers. The Authority has provided detailed reasoning for exclusion of M/s Raviraj Industries. It is reiterated that M/s Raviraj Foils has sold the imported subject goods after refurbishing the same to the domestic market. The authority called information on imports by the company after the POI. It was found that the volume of imports by the company have increased after the POI. Though the imports of the subject goods by M/s Raviraj Foils from China PR is not so significant, but since almost all the imported subject goods were sold in the domestic market, and the company has given no plausible reasons for importing the product when the company itself is engaged in production of the product, the Authority finds that the company has unduly benefited from such dumping. Therefore, the Authority holds that it would not be appropriate to consider M/s Raviraj Foils as a constituent of the domestic industry. The applicants constitute 41% of the total domestic production and with support of PG Foils; applicants constitute 56% of the total Indian production.
- xxv. As regards the argument of high interest cost of domestic industry adopted for determination of normal value, it is clarified that the Authority has considered the

optimised cost of production of domestic industry for determination of normal value of China PR.

- xxvi. As regards the volume information kept confidential in the disclosure statement, the Authority has, vide letter dated 3/3/2017 disclosed the figures and sought comments from the interested parties. The comments received thereof has been considered in these findings.
- xxvii. As regards the change in import figures as per the petition and that adopted by the Authority, it is noted that the Authority has conducted its own analysis and adopted the information as verified. The authority has also procured data from DG (Systems) to complement DGCI&S data.
- xxviii. As regards the argument of injury and causal link, the Authority notes that the injury analysis carried out hereinabove is self explanatory to establish that the dumping has caused injury to the domestic industry.
- xxix. As regards the exclusion of SRC, the Authority notes that the issue has been dealt in details in the relevant paragraphs of the disclosure statement as well as these findings.
- xxx. As regards the submissions of the domestic industry regarding dumping margin of M/s Hangzhou Five Star Aluminium Company Limited, M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd, and M/s Hangzhou Dingsheng Import & Export Co. Ltd, the same has been determined as per the actual export price of the party concerned. As regards request for disclosure of product type sold by the exporters, it is noted that it is business sensitive information and therefore cannot be disclosed.
- xxxi. As regards the submissions of the domestic industry concerning determination of non-injurious price (NIP), the Authority notes that the detailed guidelines for computation of NIP is laid down under Annexure III of the Anti-dumping Rules and the same has been adopted while determining NIP in the present investigation
- xxxii. As regards the submission of the domestic industry concerning form of duty, the Authority notes that as per the Anti-dumping Rules, the mandate of the Designated Authority is 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. Accordingly, suitability of the form of the anti-dumping measures is decided by taking in to consideration the facts of a case.

#### **O. Indian industry's interest & other issues:**

139. 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 the subject

countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

#### **P. Recommendation**

140. 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 the subject country below normal values.
- b. The domestic industry has suffered material injury on account of subject imports from subject country.
- c. The material injury has been caused by the dumped imports of subject goods from the subject country.

141. The Authority notes that the investigation was initiated and it was notified to all the interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and the 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 duty is necessary to offset dumping and injury. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. For the purpose of determining injury margin, the landed value of imports of product under consideration has been compared with the non-injurious price of the domestic like product produced by domestic industry determined for the period of investigation.

142. Accordingly, the Anti-dumping duty equal to the amount indicated in Column 8 of the table below is recommended to be imposed by the Central Government on the imports of the subject goods originating in or exported from subject country from the date of notification to be issued in this regard by the Central Government.

SN	Sub heading or Tariff Item	Description on of goods	Country of origin	Country of export	Producer	Exporter	Amount	Currency	Unit
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	7607	Aluminium Foil *	China PR	China PR	Zhejiang Zhongjin Aluminium Industry Co. Ltd	Zhejiang Zhongjin Aluminium Industry Co. Ltd	1.43	US\$	Kg

SN	Sub heading or Tariff Item	Description on of goods	Country of origin	Country of export	Producer	Exporter	Amount	Currency	Unit
2.	7607	Do	China PR	China PR	M/s Qingdao Loften Aluminium Foil Co. Ltd.	M/s Loften Aluminium (Hong Kong) Limited	1.18	US\$	Kg
3.	7607	Do	China PR	China PR	M/s Loften Environmental Technology Co. Ltd.	M/s Loften Aluminium (Hong Kong) Limited	1.18	US\$	Kg
4.	7607	Do	China PR	China PR	M/s Hangzhou Five Star Aluminium Company Limited	Hangzhou Dingsheng Import & Export Co., Ltd	0.69	US\$	Kg
5.	7607	Do	China PR	China PR	M/s Hangzhou Five Star Aluminium Company Limited	Dingsheng Aluminium Industries (Hong Kong) Trading Company Limited	0.69	US\$	Kg
6.	7607	Do	China PR	China PR	M/s Hangzhou Five Star Aluminium Company Limited	M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd.,	0.69	US\$	Kg
7.	7607	Do	China PR	China PR	M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd	Hangzhou Dingsheng Import & Export Co., Ltd	0.69	US\$	Kg
8.	7607	Do	China PR	China PR	M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd	Dingsheng Aluminium Industries (Hong Kong) Trading Company Limited	0.69	US\$	Kg

SN	Sub heading or Tariff Item	Description on of goods	Country of origin	Country of export	Producer	Exporter	Amount	Currency	Unit
9.	7607	Do	China PR	China PR	M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd	M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd.,	0.69	US\$	Kg
10.	7607	Do	China PR	China PR	M/s Hangzhou Dingsheng Import & Export Co. Ltd	Hangzhou Dingsheng Import & Export Co., Ltd	0.69	US\$	Kg
11.	7607	Do	China PR	China PR	M/s Hangzhou Dingsheng Import & Export Co. Ltd	Dingsheng Aluminium Industries (Hong Kong) Trading Company Limited	0.69	US\$	Kg
12.	7607	Do	China PR	China PR	M/s Hangzhou Dingsheng Import & Export Co. Ltd	M/s Jiangsu Dingsheng New Materials Joint-Stock Co Ltd.,	0.69	US\$	Kg
13.	7607	Do	China PR	China PR	Any other combination than SN 1 to 12		1.63	US\$	Kg
14.	7607	Do	China PR	Any	Any	Any	1.63	US\$	Kg
15.	7607	Do	Any	China PR	Any	Any	1.63	US\$	Kg

\* Aluminium Foil for the purpose of this notification means “Aluminium Foil whether or not printed or backed with paper, paper board, plastics or similar packing materials of a thickness ranging from 5.5 micron to 80 micron.”

The description of goods does not include the imports of the following:

- i. Alu Alu Laminate: Alu Alu Laminate of 40 - 50 mic in AA8079 & AA8021, is a multi-layered opaque laminate where Aluminium foil and is backed with plastic film on both side with adhesives; for use in packing capsules/tablets.
- ii. Ultra Light Gauge Converted : Ultra Light Gauge Converted is an aluminium foil having thickness of 5.5 6 mic to 7 mic which and is backed with kraft paper & scrim, or glass cloth, whether plain or printed for use in insulation, spices packing, thermal fluid lines covering and tea bags application.

- iii. Aluminium Foil Composite: aluminium foil laminated with or backed with Kraft paper and glass scrim or glass cloth with or without poly ethylene, whether printed or not printed. Aluminium foil laminated with or backed with Kraft paper however is within the scope of the product under consideration and proposed measures.
- iv. Aluminum foil for capacitors: Aluminum foil for capacitors is an Aluminum foil of 5 micron gauge with smaller widths having 99.35% purity, for use in electrical equipment such as radios, televisions, telephones, computers, microwave ovens, electrical welders, magnetos, electronic testing equipment, copy machines, air conditioners, automobiles, fluorescent lights, mercury vapour street lamps, power transmission equipment, electric motors, control units, and similar articles.
- v. Etched or formed Aluminium Foils : Etched or formed Aluminium Foils is Aluminium Foil meant to be used in the manufacture of Electrolytic Capacitor
- vi. Aluminium composite panel - Aluminium composite panel is a non-aluminium core (often PE) bonded between two thin layers of aluminium, for use in facade cladding and signage.
- vii. Clad with compatible non clad Aluminium Foil: Clad with compatible non clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater.
- viii. Aluminium Foil for beer bottle: Aluminium Foil of 10.5 micron with rough surface and perforated whether printed or not; to be used in beer bottle

143. 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.

Dr. Inder Jit Singh

Additional Secretary & Designated Authority