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F. No. 6/1/2021 - DGTR

Government of India

Ministry of Commerce & Industry

Department of Commerce

Directorate General of Trade Remedies

Jeevan Tara Building, Parliament Street, New Delhi-110001

Date: 25th February, 2022

NOTIFICATION

Final Findings

(Case No - AD (OI) 01/2021)

Subject: Anti-Dumping investigation concerning imports of Melamine from European Union, Japan, Qatar and United Arab Emirates.

F.No.- 6/1/2021-DGTR Having regard to the Customs Tariff Act,1975 as amended from time to time (hereinafter referred to as the "Act") and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the "AD Rules, 1995") thereof:

A. BACKGROUND OF THE CASE

1. M/s Gujarat State Fertilizers and Chemicals (hereinafter referred to as the 'applicant' or 'the domestic industry') has filed an application before the Designated Authority (hereinafter referred to as the 'Authority'), in accordance with the Customs Tariff Act, 1975 as amended in 1995 and thereafter (hereinafter referred as the 'Act') and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as AD Rules, 1995), as amended from time to time (hereinafter referred as the "Rules"), for initiation of an anti-dumping investigation concerning imports of "Melamine" (hereinafter referred to as the 'subject goods' or the 'product under consideration') originating in or exported from European Union, Japan, Qatar and United Arab Emirates (hereinafter referred to as the 'subject countries').

2. In view of the duly substantiated application filed by the applicant, the Authority issued a public notice vide Notification No.6/1/2021-DGTR dated 26th Feb 2021, initiating the subject investigation in accordance with Section 9A of the Act, read with Rule 5 of the AD Rules, 1995, to determine the existence, degree and effect of alleged dumping of the

subject goods originating in or exported from the subject countries and to recommend the amount of anti-dumping duty, which if levied would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The procedure described herein below has been followed with regard to the subject investigation: -

i. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Rule 5(5) of AD Rules, 1995.

ii. The Authority issued a public notice dated 26th February, 2021, published in the Gazette of India Extraordinary, initiating an anti-dumping investigation concerning the imports of the subject goods from the subject countries.

iii. The Authority sent a copy of the initiation notification to the Embassies of the subject countries in India, known producers and exporters from the subject countries, known importers and other interested parties, as per the addresses made available by the applicant domestic industry and requested them to make their views known in writing within 30 days of the initiation notification in accordance with Rule 6(4) of the AD Rules, 1995.

iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, and to the Governments of the subject countries through its Embassies in India in accordance with Rule 6(3) of the AD Rules, 1995. A copy of the non-confidential version of the application was also provided to the other interested parties, whenever requested.

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

vi. Upon the request made by the interested parties, the Authority granted multiple extensions of time up to 14th April 2021 to file their response as well as submissions.

vii. The Authority sent exporters' questionnaire to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the AD Rules, 1995:

a. Borealis, Austria
b. Borealis, Germany
c. OCI NV, Netherlands
d. Grupa Azoty Zaklady Azotwe "Pulawy" S.A, Poland
e. BASF Germany

f. Eurochem, Moscow
g. Ameropa AG, Switzerland
h. Mitsui Chemicals, Inc., Japan
i. Agrolinz Melamine International GMBH, Austria
j. DSM Melamine, Netherlands
k. Nissan Chemical Industries Ltd., Japan

viii. In response to the above notification, only the following producers/exporters from Qatar, submitted the exporter questionnaire responses:
a. Qatar Melamine Company (QMC) P.S.C.
b. Qatar Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C.

ix. Questionnaire was also sent to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules, 1995:
a. M/s Meghdoot Laminart Private Limited
b. M/s Sundek India Limited
c. M/s Bloom Dekor Limited
d. M/s Milton Laminates Limited
e. M/s GVK Petrochemicals Private Limited
f. M/s Katyani Chemtech India Private Limited
g. M/s Ecoboard Industries Limited
h. The Bombay Burmah Trading Corporation
i. M/s. Greenply Industries Limited
j. M/s Merino Industries Limited
k. M/s Hazel Mercantile Limited
l. M/s Stylam Industries Private Limited
m. M/s Surya Vikas Plywood Private
n. M/s Century Plyboards Limited
o. M/s Kishore Organics Private Limited
p. M/s Exim Corp
q. M/s HEF India Private Limited
r. M/s Managlam Timber Products Ltd
s. M/s Rushil Décor Limited
t. M/s Alfa Ica (I) Limited
u. M/s PPG Asian Paints Private Limited
v. M/s Jay Décor Private Limited
w. M/s Sandeep Organics Private Limited
x. M/s Virgo Industries
y. M/s Balaji Action Buildwell Private Limited
z. M/s Agarwal Life Sciences Private Limited

x. In response to the above notification, following importers/users have submitted questionnaire responses:
   a. M/s AICA Laminates India Private Limited
   b. M/s Cedar Decor Private Limited
   c. M/s Balaji Action Buildwell Private Limited

xi. The Authority also sent a notice to the following user associations, calling for their representations:
   a. Indian Laminate Manufacturers Association
   b. Indian Chemical Manufacturers Association
   c. Associated Chambers of Commerce and Industry of India (ASSOCHAM)
   d. Confederation of Indian Industry (CII)
   e. Federation of Indian Chambers of Commerce and Industry (FICCI)
   f. Federation of Indian Plywood and Panel Industry (FIPPI)

xii. Besides the responding producers and importers, the following interested parties have also filed legal submissions during the course of investigation:
   a. Indian Laminate Manufacturers Association (ILMA)
   b. Federation of Indian Plywood and Panel Industry (FIPPI)
   c. M/s Sandeep Organics Private Limited

xiii. Exporters, foreign producers, and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation have been treated as non-cooperating interested parties.

xiv. Information provided by the interested parties on confidential basis was examined about the 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 such information.

xv. The period of investigation for the purpose of the present investigation has been considered April 2019 to September 2020 (18 Months) and injury period covers the periods April 2016 - March 2017, April 2017 - March 2018, April 2018, March 2019, and the period of investigation. The Authority took into consideration a longer period of investigation since trade in the first and second quarter of 2020-21 was impacted by Covid-19. A longer period would be more appropriate to assess the injury to the domestic industry caused due to the alleged dumped imports.

xvi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has relied upon the DGCI&S imports data for computation of the volume & value of imports and injury analysis.

xvii. On site verification of the information and data submitted by the domestic industry and desk verification of the responding producer and exporters were carried out to the extent deemed necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of this final finding. Additional/supplementary information was sought from the applicant and other interested parties to the extent deemed necessary.

xviii. The domestic industry has provided information on the cost of production and cost to make and sell the subject goods based on Generally Accepted Accounting Principles (GAAP). The Authority has determined the non-injurious price (NIP) based on the data so provided by the domestic industry and the principles specified in Annexure III to the AD Rules, 1995.

xix. In accordance with Rule 6(6) of the AD Rules, 1995 the Authority also provided opportunity to all the interested parties to present their views orally in a hearing held on 31st May, 2021. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.

xx. The submissions made by the interested parties during this investigation, wherever found relevant, have been addressed by the Authority, in this final finding.

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

xxii. In accordance with Rule 16 of the AD Rules, 1995 the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 2nd February 2022 and comments received thereon, considered relevant by the Authority have been addressed in the final findings. The Authority notes that most of the post disclosure comments made by the interested parties are mere reiterations of the earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these final findings.

xxiii. A writ petition[1] was filed by M/s Cent Ply in Gauhati High Court challenging the Authority's disclosure statement. After initially granting an interim stay on final findings, the Court after hearing the parties dismissed the petition with directions that the Authority provides reasoned decisions on comments filed by the petitioner.

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

xxv. The exchange rate adopted by the Authority during the period of investigation for the subject investigations is 1 US$= Rs. **73.17**.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

[1] W.P. (c) 1102/2022.

4. The product under consideration at the stage of initiation was as follows:

> *The product under consideration in the present investigation is "Melamine". Melamine is a tasteless, odourless and non-toxic substance. Melamine is used for making melamine-formaldehyde, which in turn is used in producing downstream products. Melamine formaldehyde resin used in laminates offers hardness, resistance to scratch, stain, water, and heat. Laminates used in some electrical applications possess high mechanical strength, good heat resistance and good electrical insulating properties. Asbestos filled Melamine resins possess very high dielectric strength and high resistance. Besides the best dimensional stability, Melamine Formaldehyde moulding powder gives clear and bright colours, easily moldable and offers resistance to surface scratching.*
>
> *The product under consideration has a dedicated code under Chapter-29 of the Customs Tariff Act, 1975 under heading 29336100.*

C.1 Submissions of other interested parties

5. As regards the product under consideration and the like article, other interested parties have submitted as follows: -
   a. The Designated Authority in its earlier Final Findings in sunset review of imports of melamine[2] had observed in para 26 that the DI had sold 3 grades of Melamine based on quality i.e., standard, regular and MS to an extent of 90.48%, 6.5% and 3.02% respectively during the POI. This proves that Melamine has different grades as per their quality and usage. Therefore, the product needs to be categorized accordingly in the import data and DI data by fixing a suitable PCN for ensuring an apple-to-apple comparison.
   b. The Authority should verify whether the raw material coal and nitrogen gas is used or not to manufacture the PUC and whether there arises any difference due to the use of such raw materials.

C.2 Submissions of domestic industry.

6. As regards the product under consideration and like article, the domestic industry has submitted the following: -
   a. Melamine is a tasteless, odourless and non-toxic substance. Melamine is used for making melamine formaldehyde which in turn is used for producing downstream products. Melamine formaldehyde used for laminates offer good hardness, resistance to scratch, stain, water, and heat.

[2] Anti-dumping investigation (Sunset Review) concerning imports of "Melamine" originating in or exported from European Union, Iran, Indonesia and Japan. F. No. -7/14-2017-DGAD dated 19th February 2018.

b. Melamine has a dedicated customs classification code 2933 61 00 of Chapter 29 of the Customs Tariff Act, 1975. The product falls under OGL category and is freely importable.

c. Melamine produced by the domestic industry and imported from subject countries are technically and commercially substitutable. The domestic industry reiterates that there are no known differences in the technical specifications, quality, functions and end use of the two products. Melamine produced by the applicant is therefore like article to the product imported from the subject countries.

C.3 Examination by Authority.

7. On the request made by the interested parties to verify the raw material used by the domestic industry to manufacture the subject goods, it is seen that the interested parties have made a mere request but has not shown the impact on the final product. Further, the Authority notes that the product has been investigated in the past in various anti-dumping investigations. In none of the investigation it was shown that the difference in raw material used by the domestic industry or the exporters has any impact on the usage of the product under consideration.

8. No other submissions on the product under consideration have been made by the interested parties regarding the scope of the product under consideration. Therefore, the Authority holds the scope of product under consideration as was defined in the initiation notification. The scope of the product under consideration is as follows: -

> *"The product under consideration in the present investigation is "Melamine". Melamine is a tasteless, odourless and non-toxic substance. Melamine is used for making melamine-formaldehyde, which in tum is used in producing downstream products. Melamine formaldehyde resin used in laminates offers hardness, resistance to scratch, stain, water, and heat. Laminates used in some electrical applications possess high mechanical strength, good heat resistance and good electrical insulating properties. Asbestos filled Melamine resins possess very high dielectric strength and high resistance. Besides the best dimensional stability, Melamine Formaldehyde moulding powder gives clear and bright colours, easily moldable and offers resistance to surface scratching.*
>
> *The product under consideration has a dedicated code under Chapter-29 of the Customs Tariff Act, 1975 under heading 29336100."*

9. The applicant has claimed that the subject goods exported to India are identical to the goods produced by the domestic industry. The subject goods produced by the domestic

industry are comparable to the imported goods from subject countries in terms of technical specifications, manufacturing process and technology, functions and uses, pricing, distribution and marketing, and tariff classification of the goods. The two are technically and commercially interchangeable.

10. The Authority notes that no producer/ exporter has made any submission regarding different grades of melamine. The only cooperating producer/exporter has also not made any submission on this issue. Only the user industry has forwarded this submission. However, it has not supplied any data or information to back its claim. In light of this, the Authority has investigated the subject product as a whole and not grade wise. The Authority notes that in its previous SSR finding[3], it had noted that the DI had sold three grades of melamine. However, in that case too there was no cooperation from any of the exporters/producers and the Authority finally considered the product as a single commodity. The price difference between the three grades is not significant and has not been substantiated by the interested party. Accordingly, for the purpose of the present investigation, the subject goods produced by the applicant is being treated as 'like article' to the subject goods being imported from the subject countries.

D. DOMESTIC INDUSTRY AND STANDING

D.1 Submissions of the other interested parties

11. The other interested parties have submitted regarding domestic industry and standing that the applicant has not disclosed volume and value of imports made by it and that the Authority must examine imports by the applicant prior to the period of investigation and for the period of investigation as applicant has made heavy imports.

D.2 Submissions of the domestic industry

12. The domestic industry has submitted as follows with regard to domestic industry and standing:
    a. Production of the applicant accounts for entire production of the subject goods in India.
    b. The applicant is neither related to any exporter nor any producer of the subject goods in subject countries, nor to any importer in India.
    c. The applicant has not imported the alleged dumped article from the subject countries during the entire period of investigation (POI).
    d. The applicant has not imported Melamine from any other country during the period of investigation. If imports made by the domestic industry are removed from the

[3] *Supra* note 1.

total imports from the subject countries over the injury period, the rate of increase in imports is even higher. Further, the applicant has not claimed injury over the entire injury period. The applicant has only claimed injury due to increased imports at dumped prices in the period of investigation.

e. Regarding imports for previous years, it is submitted that sales of them were solely done on high sea sales and ex-bond basis. Bill of entries for home consumption for imports were filed by customers to whom material was sold and not by the applicant. They are not included in production and sales reported in the investigation and injury claimed has no effect of imports made in the previous years.

f. The applicant satisfies the requirements of Rule 2(b) of the AD Rules, 1995 and application satisfies the requirements laid down under the Rules.

D.3 Examination by the Authority

13. Rule 2(b) of the AD Rules, 1995 defines domestic industry as under:

> *" 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."*

14. The application in the present investigation has been filed by M/s. Gujarat State Fertilizers & Chemicals Limited. The applicant is the sole producer of the subject goods in India. The Authority has examined the DGCI&S transaction-wise data and found no imports of the product under consideration were made by the applicant during the period of investigation. However, it is seen that the applicant had made some imports of the product under consideration in the years 2016-17, 2017-18 and 2018-19. In the instant case, while the domestic industry was importing the subject goods up to the previous year, it has stopped importing the subject goods after it started commercial production on account of its expanded capacity. The focus of the applicant has not turned to imports and it is not behaving like an importer trader. The fact that the company has invested more than Rs 800 crores on its new plant shows that the applicant company continues to remain focused on producing and selling melamine in the country.

15. Further, the Authority notes that the definition of domestic industry within the ambit of Rule 2(b) of AD Rules, 1995 can be divided into two parts –

a) *the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith;*
b) *those [domestic producers] whose collective output of the said article constitutes a major proportion of the total domestic production of that article.*

Both these parts of the definition are further qualified by two conditions, namely –

a) 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.
b) Provided that in exceptional circumstances referred to in Rule 11(3), the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry.

16. The first exception deals with a situation where the producers have themselves imported the subject goods from a subject country. In such a situation by the deliberate use of the word 'may' the investigating authority has been vested with the discretion to analyse facts of individual cases and thereafter, decide upon the disqualification of a producer as domestic producer.

17. This definition is also in complete consonance with Article 4.1 of the Anti-Dumping Agreement which defines the term 'domestic industry' for the purposes of the Agreement. Article 4.1 reads as follows –

> *"4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or, to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:*
>
> *(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers; ……"*

18. The qualifier 'may' has also been provided and has been used in respect of both parts of the definition in the Agreement. Further, the WTO Panel in its Report in *EC- Fasteners*[4] had observed:

[4] Panel Report, *European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China,* WT/DS397/R.

> "7.244 We are not persuaded by China's view that Article 3.1 of the AD Agreement applies to the decision whether to exclude related or importing domestic producers in the manner proposed by China. The European Union suggests that the reason Article 4.1 allows the exclusion of related producers is because such producers may be less representative of the interests of the domestic industry, and may be benefiting from the dumped imports themselves. Thus, the European Union argues that, if anything, the exclusion of such related producers is in the exporting country's interest, which undermines the assertion that the failure to exclude them in this case is an abuse of the discretion provided for in Article 4.1. *In our view, there is nothing in Article 3.1, or in Article 4.1, that limits the discretion of investigating authorities to exclude, or not, related or importing domestic producers.* Moreover, even assuming we considered it necessary to review the European Union's decision not to exclude related producers in this case, we fail to see the relevance of the factual basis for China's argument. The fact that two of the exporters to which EU producers were related stated that they produce principally for export, rather than for sale in the domestic Chinese market is in our view irrelevant to a decision whether to exclude the related EU producers from the domestic industry. In the absence of any criteria in the AD Agreement against which the decision not to exclude related producers might be assessed, we reject China's assertion that the European Union acted inconsistently with Articles 3.1 and 4.1 of the AD Agreement by failing to exclude related producers from the domestic industry."[5]

19. The AD Rules, 1995 were drafted for fulfilling India's obligation under the WTO Treaty Regime. Thus, such provisions are to be interpreted in the same sense to give effect to the corresponding treaty provisions. The Supreme Court while examining the relationship between the WTO Regime and the Indian municipal law in G.M. Exports v. Commissioner of Customs, Bangalore[6] made the following observation –

> *"* (4) *In a situation in which India is a signatory nation to an international treaty, and a statute is made to enforce a treaty obligation, and if there be any difference between the language of such statute and a corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty."*[7]

[5] *Supra* note 3.
[6] 2015 (324) ELT 209 (SC).
[7] *Id.* para 23.

20. This position was further emphasized by the Supreme Court in Union of India and Ors. V. *Agricas LLP and Others*[8]. Therefore, even if there is some deviation in the placement of the language of the AD Rules, 1995, the same is to be purposively interpreted with the in consonance with the WTO Agreement on Anti-dumping.

21. Further, the Authority notes that the domestic industry has facilitated imports of the subject goods from Qatar in significant quantities during the injury period even though they have not imported the goods themselves. The domestic industry has high sea sales clarified that such imports were facilitated to help their customers. The Authority notes that the quantum of facilitated imports by the domestic industry has, in fact, declined from 2016-2017 to 2018-2019 and thereafter became nil in the POI.

22. While assessing the injurious effect of imports, the Authority considers two parameters, namely, the market share of the subject imports and the price pressure caused by such imports on the domestic industry's price. It is noted that the market share of imports from Qatar is the highest amongst the four subject countries. However, its market share mainly assumed such a high proportion largely because of the high imports by importers other than the those facilitated by the domestic industry. Further it needs to be appreciated that during the POI, the imports from Qatar continued to remain quite high despite the facilitated by the domestic industry was NIL. Therefore, while the domestic industry no doubt also contributed towards a high market share of Qatar, the attractiveness of imports from Qatar has continued during the POI even when the domestic industry did not facilitate any imports in POI.

23. Further, the landed value of imports from Qatar facilitated by the domestic industry during 2016-17 were lower than the landed prices of other importers from Qatar. However, in 2018-19, the situation underwent a reversal and the imports facilitated by the domestic industry from Qatar were at a higher landed price than other importers along with the quantum of imports also having reduced. The model and pattern (quantity and price) of imports facilitated by the domestic industry from Qatar does not indicate its nexus with the injury inflicted to the domestic industry during the POI. Further, the fact that there has been no import facilitated by the domestic industry during the POI shows that there is no contributory effect of the domestic industry's past imports during the injury period on computation of injury margin and dumping margin which have been computed for the POI.

24. The applicant has contended that it only acted as a facilitator for imports in order to meet customer demand, the applicant has not filed bill of entry for home consumption. The applicant has also provided bill of entries to support its contention. It is seen that the bill

[8] 2020 SCC OnLine SC 717.

of entries for home consumptions for these imports has not been filed by the applicant. It is also seen these imports pertain to period prior to commercial production by the applicant on the expanded capacity. The fact that the applicant has invested more than Rs ** crores on its new plant also shows its commitment to undertake commercial production in the country. The Authority also notes that the focus of the applicant has remained on production. The applicant has not turned to imports, nor has behaved like an importer-trader.

25. It is also seen that the applicant is not related to any exporter of the subject goods in the subject countries or importer of the subject goods in India. Accordingly, the Authority holds that the applicant is an eligible domestic industry within the meaning of Rule 2(b) of the Rules. Further, the application satisfies the criteria of standing in terms of Rule 5(3) of the AD Rules, 1995.

E. CONFIDENTIALITY

E.1 Submissions by the interested parties

26. As regards confidentiality, the other interested parties have submitted as follows:
    a. The applicant has not followed the confidentiality requirements as prescribed under the Trade Notice No. 10/2018 dated 7 September 2018.
    b. Transaction wise import data as relied upon by the applicant has been claimed confidential.
    c. The applicant has not revealed the volume data such as domestic sales, export sales, demand, market share in demand, etc. which should not be treated as confidential data. Further, the applicant has not disclosed the trend of volume. Information has been withheld by the applicant under garb of confidentiality with sole objective of restricting access of other interested parties so that they are unable to make submissions on the veracity of the claims.
    d. Non-confidential version of the Petition does not provide information which could not be kept confidential or appropriate non-confidential summary of the information.
    e. Purchase policy, sales policy, accounting policy, cost accounting policy, quality control procedure and tests have been treated as confidential even though there is nothing confidential in giving general policies adopted by the companies.
    f. Under Section VI of the petition which pertains to costing information, certain information such as utilities consumption, cost of production, raw material and packing material consumption information is required to be provided for the POI as well as for the injury period. In such a scenario, where data for more than POI is

requested, a trend of information in indexed manner is required to be provided. However, no such indexed information has been provided.

E.2 Submissions by the domestic industry

27. As regards confidentiality, the domestic industry has submitted the following:
    a. Balaji Action Buildwell has only circulated a non-confidential copy of their written submissions and did not serve a copy of their response with the domestic industry.
    b. On the submission of purchases and sales policy being claimed confidential by the applicant, the Authority has routinely allowed confidentiality on this. The respondent has not established what prejudice would be caused if these have not been disclosed.
    c. As regards non-submission of DGCI&S data, domestic industry has fulfilled its obligation of providing import data in the manner prescribed in Trade Notice 07/2018. The interested parties can access import data in PDF format from the domestic industry and in excel format from DGCI&S.

E.3 Examination by the Authority

28. On confidentiality of information, Rule 7 of the AD Rules, 1995 provides as follows:

> *"Confidential information: (1) Notwithstanding anything contained in subrules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*
>
> *(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information 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 authorize its disclosure in a generalized or summary form, it may disregard such information."*

29. The Authority made available non-confidential versions of the information provided by the various interested parties to all the other interested parties for inspection through the public file containing non-confidential version of evidence submitted by various interested parties.

30. As regards the contention that excel file of transaction-by-transaction imports were claimed confidential by the domestic industry, it is noted that the procedure for sharing and procuring import data has been laid down in the Trade Notice 07/2018 dated 15th March 2018. The Trade Notice provides that (i) the sorted import data relied upon by the domestic industry can be shared in hard copy & (ii) interested parties can seek authorization from the Authority for seeking raw transaction-wise import data from DGCI&S. The hard copy of the sorted import data was made accessible to the interested parties based upon declaration/undertaking as per prescribed format. The interested parties who requested authorisation for procurement of import data from DGCI&S and provided undertaking as per Trade Notice 07/2018 were also granted authorization to obtain import data in excel file from DGCI&S. The Authority, thus, notes that the procedure outlined in the relevant Trade Notice has been duly observed and the same practice has been followed uniformly in all other investigations conducted by the Directorate.

31. Further, the Authority examined the information provided by the domestic industry and the other interested parties on a confidential basis for sufficiency of such claims in accordance with Rule 7 of the AD Rules, 1995. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and has held such information as confidential so as to not further compromise the interests of the party by disclosing such information.

F. MISCELLANEOUS SUBMISSIONS

F.1 Submissions by the other interested parties

32. The other interested parties have made the following miscellaneous submissions:

a. The application does not meet the requirements of the Anti-dumping Agreement because the constructed normal value is in contravention of Customs Tariff Act, 1975 and AD Rules, 1995 and adjustments made with respect to the export price are abnormally high. Articles 5.3 and 6.6 of the Anti-Dumping Agreement requires the Authority to consider evidentiary shortcomings before deciding whether to initiate an investigation.

b. There is no acceptable rationale as to why duty should be imposed even when there has been duty for more than 16 years on various sources.

c. Period of Investigation was affected by 6 months of COVID-19 impact and startup impact of commencement of new capacity. New investigation right after capacity expansion by sole producer is intended to defeat the purposes of duty.

d. There is no segregation of the price parameters done to ensure the effects of COVID-19 is not attributed to subject imports. The applicant must be directed to provide data on startup effects on new capacity and effect of COVID-19 on startup of a new capacity.

e. Prices were not a determining factor for users while importing subject goods or sourcing them from the applicant. Imports were necessitated by demand supply gap.

f. Prices of Melamine have more than doubled in the post-POI. Post-POI developments should be examined. There is no bar in the rule to conduct examination of post period of investigation data in a fresh matter.

g. Despite the PUC being subject to duty from various sources for the past two decades, the domestic industry has not been able to cater to even 25 per cent of the domestic demand. Even after the recent capacity addition undertaken by the domestic industry, the supply is insufficient to meet the domestic demand.

h. It is a fallacious assumption that an 18-month POI allows a better comparison of the trend in imports and accounts for both the impact of COVID-19 and significant capacity additions. Neither data nor adjustments are shown to demonstrate the same.

i. Indian Laminate Manufacturers Association have claimed that the cost of Melamine is about 20-22% of the overall cost of end product and a quantification of exact effect is not possible at this juncture as the quantum of duty is not known.

j. The users will not be able to pass on to the end products and if they have to do it, market share of the end product will be taken by imported products.

k. Reference to the annual reports of AICA is misleading. The statements in the annual reports are about past period and such softness in raw material price prevailed will disappear if ADD is imposed.

l. The applicant has filed an application treating UAE as a subject country despite knowing the fact that the exported goods are not produced in the UAE and even the Authority has initiated the investigation treating it as one of the subject countries.

m. The application does not meet evidentiary requirements of the Anti-dumping Agreement, Customs Tariff Act, 1975 and AD Rules, 1995 because normal value determined for subject countries is in contravention of Section 9A(1)(c) r/w Annexure I of AD Rules, 1995 and adjustments made to export price of subject countries are abnormally high.

n. POI other than 12 months is the exception to this rule and should not be resorted to unless cogent and compelling reasons exist for such departure. No sufficient reasons have been stated in the application or in the initiation notification.

F.2 Submissions by domestic industry

33. The domestic industry has made the following miscellaneous submissions: -

a. The first quarter of 2020-21 was impacted by COVID-19. 18 months period of investigation covers a period (a) prior to COVID-19 lockdown, (b) during COVID-19 lockdown and (c) after COVID-19 lockdown. 18-month POI has ensured that any effect of start-up cost of plants is amortized. Further, there has been a significant decline in the import prices over the POI. Other interested parties have so far not been able to highlight how a period of 18 months is inappropriate.

b. There are no production facilities in United Arab Emirates and goods being shipped as having country of origin as United Arab Emirates are goods declared as "processed in UAE". This fact was admitted by the UAE Government during the oral hearing.

c. The other interested parties have not established that quality was, at all a reason behind increased imports which indicates that the users imported because of low prices.

d. Indian Laminate Manufacturers Association and Federation of Indian Plywood & Panel Industry have not provided any material to establish their credentials or authorization by consumers.

e. Associations have not complied with the requirements and obligations prescribed by the DGTR. The Authority is requested to consider the user associations as non-cooperative and disregard their submissions.

f. Annual reports of AICA Laminates India Private Limited (participating user) for 2019-20 shows that even when the input prices decline, the benefits are not being passed onto the end users.

g. The users have admitted in the response that share of participating company is not very high. The Authority is requested to consider degree of information provided by consumers and weightage in the proposed determination.

h. All the interested parties are consumers of the subject goods and are therefore required to file the user questionnaire responses.

i. The duration of shutdown due to waterlogging and power interruption was very low and it could not have led to such low-capacity utilization and significant losses.

j. The domestic industry has fulfilled the obligation of providing import data in the manner stated in Trade Notice 07/2018.

k. It is an established position of the Designated Authority that the post period of investigation data is not relevant for fresh investigation. It can be considered only in the review investigations.

F.3 Examination by the Authority

34. Authority notes that the present investigation was initiated based on sufficient prima facie evidence submitted by the applicant in the application. The application had provided all relevant information for initiation of investigation. On perusal of the application, the Authority was satisfied that it contained sufficient prima facie evidence to justify initiation of the present investigation and thereby initiated the investigation. As per Rule 6 of AD Rules, 1995, the Authority was required to disclose a summary of factors alleged to have caused injury to the domestic industry. The Authority has provided the grounds for its satisfaction to initiate the investigation in the initiation notification. Therefore, the Authority holds that the claim that the present application does not satisfy the requirement of the law is inappropriate.

35. On the submission made by the interested parties that the period of investigation is not adequate as it was impacted by COVID-19, the Authority has also examined the month wise trend of imports and sales of the domestic industry over the period of investigation. It is seen that imports from all sources have happened continuously over the period of investigation. Further, barring a very short period, the domestic industry has been also in operation over the period of investigation. Therefore, it is seen that COVID –19 has not had any major impact over the POI.

36. As regards the submission on startup impacts of new capacity, the Authority notes that new plant of the domestic industry has been in operation for a sufficient period now. Further, domestic industry has achieved capacity utilization of 86% in the new plant in the last 6 months of the period of investigation. Therefore, the Authority holds that an 18-month period is sufficient to cover any startup impacts of the new capacity and the POI considered by the Authority is sufficient.

37. As regards the submission of the interested parties that there have been duties for almost two decades, the Authority notes that the current investigation is a fresh investigation. The Authority is required to examine dumping, injury, and causal link with regard to the current investigation. The response filed by the responding producer/exporter clearly shows that they have resorted to dumping in the Indian market. Past history of cases has no nexus in a fresh investigation which is altogether from a different set of countries.

38. On the submission of the domestic industry and the other interested parties on UAE as a subject country, the Authority notes that during the course of hearing the Government of UAE had admitted that there were no production facilities for subject goods in UAE. It has also been stated that the goods are produced in some other country but have been exported through UAE. The Authority has however considered the subject countries on the basis of country as reported in Directorate General of Commercial Intelligence and Statistics (DGCI&S) data. Therefore, the Authority has considered only those imports as

imports from subject countries, which have been declared to customs authorities. Accordingly, the Authority has included UAE as a subject country in the present investigation.

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

39. Under section 9A (1) (c), normal value in relation to an article means:

> *"i. The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or*
> *ii. When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either*
> *a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
> *b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);*
> *Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference lo its price in the country of origin."*

G.1 Submissions by the other interested parties:

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

a. Construction of normal value on the basis of export prices of urea is untenable rather the import price of urea into these countries was required to be taken into consideration. This is because while constructing normal value by calculating the cost of production in the subject country, it is the price at which inputs are consumed that must be taken into consideration. Since urea imported into EU and Japan would be consumed in their respective domestic markets for, inter alia, the production of

Melamine, it would be more indicative of the prices of Melamine prevailing in that domestic market of corresponding subject countries. On the other hand, the export price of urea from the subject countries would be the value at which it is being consumed in other countries and not the subject countries.

b. Constructed price in India is not appropriate as conversion costs of the applicant are inflated due to high depreciation incurred as a result of added production capacity of 40,000MT.

c. The domestic industry has adopted inflated and arbitrary adjustments to arrive at ex-factory export price without any basis or evidence.

d. Normal value computed in the application has been estimated based on data that does not relate to Qatar.

e. The petitioner is an exporter of the PUC to European Union as well as to other countries and thereby, must have a fair idea and evidence of the market price of the goods in such countries and therefore, should not be allowed construct normal value for such market economy countries.

f. Adjustments made to the export price do not relate to exports from Qatar and are not supported by any evidence.

g. The applicant could have relied on the periodic global market review and analysis reports for determination of normal value.

h. The applicant exports to European Union and other countries and therefore would be aware about the prices in the European Union.

i. Muntajat India Private Limited only provides marketing support services in relation to chemicals and petrochemicals sold in India by Muntajat (Qatar) and was therefore not required to participate in the hearing.

j. There are three different grades of Melamine sold by the domestic industry, as observed by the Authority itself in a previous investigation, based on quality i.e., standard, regular and MS to an extent of 90.48%, 6.5% and 3.02% respectively during the POI. The same needs to be differentiated in imports and domestic industry data for the purpose of determination of normal value and export price.

k. QMC has procured the raw material at market prices and does not pay any "preferential/special price". It is unreasonable how a claim of efficiently controlled costs can be correlated with the existence of a subsidy.

l. The allegation of particular market situation of the applicant concerns only natural gas in Saudi Arabia which are of no relevance to Qatar. For this, the petitioner has relied on Trade Policy Review of Saudi Arabia, which again has no relevance to Qatar.

m. The applicant's claim that GCC is a unified market and due to the distortion in prices of raw material in Saudi Arabia, the prices in the entire GCC are suppressed is incorrect. The fact that GCC has a common trade remedy system has no relevance regarding price setting in the GCC.

n. The applicant did not raise the issue of particular market situation prevailing in Qatar at the time of application.

o. The applicant has failed to explain how alleged "particular market situation" prevents a proper comparison of a normal value based on domestic sales and the export price as has been explained by the Panel in Australia – Anti-dumping Measures on A4 Copy Paper[9]

p. Muntajat India Private Limited is only providing agency services to the exporter in Qatar and sales of Melamine are undertaken directly by Muntajat. MIPL is not an importer of Melamine into India and was not required to participate.

G.2 Submissions by the domestic industry

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

a. The calculation of normal value is based on the cost of production of the Plant I and Plant II as per the audited accounts which may be verified by the Authority. The claim of opposing parties in this regard is therefore devoid of any merit.

b. Majority of the producers of the subject goods are integrated and manufacture urea captively. Import of urea could have been for other purpose such as for use in fertilizer. Therefore, import price into the country would not have been a true reflection of cost of urea for these producers. Considering the import price of urea would not have been true reflection of dumping.

c. Goods imported into India from the subject countries are at dumped prices. Besides Qatar, there has been no participation by any producers or exporters from any of the other subject countries. Therefore, the claims of dumping have remained unchallenged.

d. The product under consideration is globally traded on spot basis without any long-term contractual obligations between the users and producers.

e. The global capacity of the subject goods is very high as compared to the demand due to the availability of urea at very low prices.

f. The product is sold in domestic market on a regular basis. Exports are made to utilize idle capacities and eventually at any price offered by the customer.

g. There is a big difference in the price at which the producers sell the subject product in their domestic market and price at which subject product is exported resulting in dumping. Due to this reason, producers in the past investigations of product under consideration did not participate and there is absence of participation in the present investigation as well.

h. On comparison of export price of the subject goods from Japan to India with the export price of urea from Japan, it can be seen that export price from Japan is lower

[9] Para 7.27 of Report of the Panel, Australia – Anti-dumping Measures on A4 Copy Paper, WT/DS529/R.

than the cost of urea required to make Melamine. The capacities in Japan might not be surplus, but the data clearly establishes that the exports from Japan are priced below the cost of raw materials.

i. Qatar Melamine Company (producer) has made its domestic sales through Muntajat (related party), so the producer was required to submit the details of domestic sales to unaffiliated parties in Appendix-4C.

j. Responding producer has failed to provide information with respect to normal value in the questionnaire as it has not given details of sales made to related parties.

k. QMC has misrepresented information regarding its ownership structure. It is a government-controlled entity because its holding companies are directly or indirectly controlled government-owned entity.

l. QMC has procured from a related entity and must show that they procured inputs at a market price very much comparable to the international prices.

m. Prices of Natural Gas (methane), which is used as a feedstock for production of ammonia/urea are set by the Arabian Council of Ministers and therefore is subject to Government intervention.

n. The Authority in the anti-dumping investigation concerning imports of Polypropylene found that the feedstock prices are significantly lower as compared to their market value on account of the policy decision of the Government of Saudi Arabia. Therefore, a particular market condition can be said to exist.

o. There is a particular market situation prevailing in Qatar due to which cost of production and prices in domestic market are suppressed and do not allow a proper comparison with the export price. The export prices are in competition to other global dumping companies.

p. Due to distortion in prices of raw material in Saudi Arabia and GCC being one unified market, prices in the entire GCC region are suppressed. There are no tariff barriers between countries constituting GCC and while the information is publicly available in case of Saudi Arabia, the facts are same or similar in case of Qatar and UAE, albeit not publicly disclosed.

q. GCC authorities cannot take dual and contradictory stand; when it comes to GCC domestic industry, it is contended that GCC is a unified market and when it comes to exporters, it is contended that they are different countries.

r. Prices of natural gas (methane), which is used as a feedstock for the production of ammonia/urea have been set by the Arabian Council of Ministers and not determined by free market forces. Trade Policy Review of the Kingdom of Saudi Arabia drawn up by the WTO Secretariat has also been relied upon in this regard.

s. Qatar Chemical and Petrochemical marketing and Distribution Company (Muntajat) has a related entity in India named Muntajat India Private Limited which is engaged in selling and distribution service and hence, was required to file a response.

t. On the submission of claims of other interested parties with respect to export price adjustments, the claims are very much according to the prevailing practice.

u. On the submission of considering export price of Urea for normal value, majority of producers are integrated and manufacture urea captively and considering export price of urea would not have been true reflection of dumping.

v. As regards the submission on different grades of Melamine, no exporter has made this demand. None of the past investigations had separate normal value, export price and dumping margin for different grades of Melamine.

G.3 Examination by the Authority

42. The Authority has noted all the arguments of the interested parties and has examined all relevant aspects of the submissions as under.

43. The Authority sent questionnaires to the known producers/exporters in the subject countries, advising them to provide information in the form and manner prescribed by the Authority. Only one producer namely Qatar Melamine Company from Qatar has responded and provided relevant information in the present investigation. All other producers in the subject countries have not responded and have been treated as non-cooperative for the purpose of the present investigation.

44. The Authority notes that M/s QMC plant uses the urea-process primarily to manufacture melamine. Therefore, the constructed normal value in case of Qatar has been based on the cost as per Plant-I and Plant-II of the applicant which is also urea based.

A. Qatar

i. Qatar Melamine Company (QMC) P.S.C. and M/s. Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C.

a. Determination of normal value

45. Regarding the prevalence of a particular market situation in Qatar, the Authority notes that the same has not been established as explained by the WTO Panel in *Australia – A4 Copy Paper* as to how the alleged distorted prices of natural gas in Saudi Arabia is rendering a comparison between the export price and normal value of Qatar impossible. Therefore, the Authority holds that the domestic industry has not substantiated its allegations regarding the prevalence of a particular market situation in Qatar.

46. Regarding submissions made with respect to related party sales with Muntajat India Pvt. Ltd. the Authority notes that Muntajat India Pvt. Ltd. does not act as an importer/exporter/distributor to Q.P.J.S.C. and has not made any sales in India. Muntajat India provides marketing services to Q.P.J.S.C. and was not involved in any sales made to India and was therefore, not required to participate in the present investigation.

47. Based on the data filed by Qatar Melamine Company (QMC) P.S.C. a producer of the PUC and Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C., an exporter of the PUC from Qatar, the Authority notes that the Qatar Melamine Company has made all the domestic sales to its affiliated company Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C, which has further exported to India and other countries. Since no domestic sales were made to any unaffiliated party, the Authority, therefore, has considered cost of production for the purpose of determination of normal value.

48. The information filed by QMC and Muntajat has been accepted after being duly verified to the extent necessary for the determination of the normal value.

49. The Authority determined the normal value on the basis of the ex-factory cost of production after adding a reasonable profit margin. The normal value so determined for QMC and Muntajat has been mentioned in the Dumping Margin Table.

b. Determination of net export price

50. The Authority notes that, during the POI, Muntajat has exported a total quantity of *** MT, directly to Indian customers. The quantity reported by Muntajat has been considered by the Authority for determining the export price. The Authority, for calculating the export price, has considered the data filed by the Muntajat and QMC. Muntajat claimed adjustments on account of shipping cost, surveyor cost, ocean insurance, handling charges, inland freight, bank charges, SGA and credit cost.

51. Accordingly, the export price for QMC and Muntajat has been determined based on the weighted average export price to India, and the same is shown in the dumping margin table.

ii. Other producers

a. Determination of normal value

52. Normal value for non-cooperative producers/exporters from Qatar has been determined based on facts available in terms of Rule 6(8) of the AD Rules, 1995. The normal value so determined is mentioned in the dumping margin table.

b. Determination of net export price

53. The net export price for non-cooperative producers/exporters from Qatar has been determined based on facts available in terms of Rule 6(8) of the AD Rules, 1995. The net export price so determined is mentioned in the dumping margin table.

B. European Union, Japan and United Arab Emirates

a. Determination of normal value

54. The Authority notes that none of the producers/exporters from European Union, Japan and United Arab Emirates has participated in the present investigation. For the non-cooperative producers/exporters, the Authority has determined normal value at ex-factory level on the basis of facts available in terms of Rule 6(8) of the AD Rules, 1995. The normal value so calculated is provided in the dumping margin table below.

b. Determination of net export price

55. ln the absence of cooperation from any producer of European Union, Japan and United Arab Emirates the Authority has determined the net export price-based facts available in terms of Rule 6(8) of the AD Rules, 1995 and is mentioned in the dumping margin table below.

C. Dumping margin

56. Considering normal values and export prices determined as above, dumping margin for producers/exporters from the subject countries has been determined by the Authority and the same is provided in the table below: -

SN	Particulars	Normal Value	Export price	Dumping margin		
		USD/MT	USD/MT	USD/MT	%	Range
1	**Qatar**					
a	Qatar Melamine Company	***	***	***	***	40-50
b	Any other	***	***	***	***	60-70
2	**European Union**					
a	Any	***	***	***	***	10-20
3	**Japan**					
a	Any	***	***	***	***	10-20
4	**United Arab Emirates**					
a	Any	***	***	***	***	10-20

H. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

H.1 Submissions of the interested parties:

57. The opposing interested parties have submitted the following regarding injury and causal link:

a. There are differences in the conditions of competition between imports from Qatar and other subject countries. Imports from Qatar have declined and should not be cumulated for the assessment of injury and causal link.

b. Globally unforeseeable market developments and pandemic have caused injury to the applicant and not the imports.

c. There is no volume effect of subject imports and particularly from Qatar. Imports of Melamine from Qatar have reduced significantly in both absolute and relative terms over the injury period.

d. Cumulative assessment is not appropriate in this case as there is no undercutting of domestic prices from EU, Japan and UAE. Only the price of imports from Qatar are below the domestic industry's price.

e. There are differences in conditions of competition between imports from Qatar and the other subject countries

f. Increase in production capacity, production, sales, market share and productivity, shows that the domestic industry cannot possibly be suffering from material injury.

g. Cause of injury even after negative price undercutting is not explained. The applicant has reduced its prices to penetrate and gain market share.

h. The Injury parameters are not on comparable basis due to significant capacity additions in the period of investigation and other reasons such as COVID-19 effects. Losses occurred because of, higher fixed costs and other causes.

i. In the final finding of 1st sunset review dated 19th February 2018, the Authority had concluded that there was no injury or likelihood of injury to the domestic industry.

j. The analysis of the volume and price parameters does not reflect any injury at all.

k. Market share of the domestic industry does not show any sign of injury.

l. Volume of imports from the subject countries have not increased significantly in the period of investigation.

m. The applicant has itself admitted in its Annual Report of 2019-20, that the injury is entirely because of factors other than dumped imports such as poor demand, upward price movement of raw materials and servicing of the Rupee Term Loan and does not mention anything related to the external price pressure.

n. Profits earned from exports must be added to the profits earned by the domestic industry as it is the overall situation that is relevant for the purposes of determining injury.

o. Capacity expansion, increased borrowings and higher finance costs have had an impact on the performance of the domestic industry.

p. The applicant has admitted in the Annual report that sales of Melamine have increased. This is despite the capacity utilization of only 56%.

q. Most of the imports from Qatar in the previous years were made by the applicant itself.

r. The applicant has faced shutdown in the period of investigation due to water logging and power interruption.

s. As per the information, Plant 1 and 2 of the domestic industry are not operating post April 2020 and the same may be verified.

t. Entire production of industrial products of the applicant are suffering during the period of investigation.

u. Chinese imports have impacted the prices of the domestic industry and the imports from the subject countries are not a cause to the injury.

v. As per evidence available, the new capacity of the applicant has Melamine and Urea as joint product. The applicant is silent about such new technology adopted.

w. Return of 22% on capital employed on the fresh plant of the domestic industry will lead to irrationally high NIP.

x. Users have already started to buy more from the applicant after new capacity has gone live. Trend of imports has reversed in the post-POI period.

y. Dip in profitability during the POI is entirely due to increase in cost of production and sales impacted by finance cost of the expansion and therefore, it should not be attributed to imports.

z. Cost of domestic industry increased during the period of investigation as compared to the base year due to the impact of massive capacity expansion during the period just preceding the period of investigation.

aa. Impact on inventory may be due to drop in exports.

bb. The applicant has not provided the relevant information pertaining to the details of country wise volume and value of imports during the last two years. This information has an impact on the volume parameters of the domestic industry.

cc. Treatment accorded to ammonia as a by-product must be examined and methodology applied in the previous SSR should be applied to the present case also.

dd. Additional investment incurred towards the setting up of the additional urea capacity of 50,000 MT in the integrated plant must be segregated and disregarded while calculating capital employed for NIP purpose.

ee. In the application for sunset review of anti-dumping duty on import from China PR, it was stated that imports from the present subject countries were not at higher prices and therefore, not causing injury.

ff. Fresh capacity additions require a certain amount of time to yield results. The applicant has started to reap the benefits of such capacity additions.

gg. The request to calculate month-wise price undercutting cannot be raised at such a belated stage.

hh. The applicant's request to consider price undercutting and injury margin on the basis of only low-priced transactions in the anti-dumping investigation of caustic soda from Japan and Qatar was not granted. Therefore, it should be rejected now as well.

ii. Volume of imports from Qatar declined by 46% and from other subject countries increased by 4%. Sales of the applicant has increased by 88%. The applicant is itself to be blamed for not increasing price to optimal level before POI.

jj. The domestic industry has heavily invested in the new capacity which is an indication of good health of the industry and profitability.

kk. A normal cost of production after taking out capital cost and other costs associated with capacity addition and ramp up operation, would bring down cost of production and establish that the losses are entirely due to these costs.

ll. Production of melamine leads to generation of certain useful gasses and other by-products which have significant commercial value which needs to be accounted for while determining the NIP.

mm. At the same time, sales of domestic industry have increased by nearly 80% in the POI compared to immediately preceding year i.e. 2018-19. During the same period, the market share of the domestic industry has increased by approximately 105%. Therefore, there is no volume effect on sales of the domestic industry

nn. Though consumption in absolute terms has prima facie increased, it is relevant to note that the extent of increase in imports from the subject countries was negligible. While imports have increased by less than 5%, sales of domestic industry have increased by nearly 80% in the period of investigation compared to 2018-19.

oo. There was no price undercutting by the subject countries during the POI. In fact, the price undercutting has been negative since 2017-18 for subject countries. There is a clear admission that prices of imports from subject countries are non-injurious.

pp. In the anti-dumping investigation conducted on China PR, the applicant claimed that the prices from the present subject countries were not causing injury as they were higher than that of China. The petitioner had demonstrated as a matter of fact that landed value of imports of subject goods from China were far higher than that of present subject countries after addition of Anti-Dumping Duty.

qq. Despite prices of imports from China PR being far higher than selling price of the applicant, users continued to import from China PR. Similarly, prices of imports

from the subject countries were also higher than that of the applicant but were able to find a market in India.

rr. Profitability of the Petitioner has no correlation with price undercutting from the subject goods from the subject countries.

ss. Despite the petitioner having enough leeway to increase its selling price, at least to the same level as that of imports from the subject countries or China PR, they did not and therefore, no injury can be said to be caused as per the Panel Report in China –X-Ray Equipment[10].

tt. The domestic industry has registered improvement across all parameters. While the capacity of the domestic market has increased substantially, production, capacity utilization and sales have all increased.

uu. It is pertinent to note that the demand has fallen in the POI compared to the previous year. Hence, the petitioner's claims that market share ought to have been greater in light of 'sharply rising demand' are based on a false premise.

vv. Due to technology deployed in the new plant, there is a recovery of 39.37 kg of Melamine out of 112.5 kg of Urea and the rest results in off gases viz. CO_2 and Ammonia, besides little by way of moisture evaporation. These gases are released at 600^0 C temperature in which the moisture in urea evaporates and the off-gases are reclaimed for further processing. Both are recycled to produce urea and processed further into Melamine as target product and Ammonia & Carbon dioxide as off-gas recycled again in the same ratio continuously.

ww. Urea is freely imported from Middle Eastern countries to India for industrial applications in the range of USD 240-250/MT. In case the applicant is claiming a higher value than landed cost of imported urea, its claim should be restricted to level of price of imported Urea.

xx. No industry suffering from material injury or threatened to suffer material injury would invest and add massive capacity for the product to the tune of 366%, unless the intention is to manipulate the anti-dumping laws to capture higher market share.

yy. The market share of the applicant as well as the subject countries has increased during the POI as compared to the base year because of the antidumping duty being in force on imports from China since a long time.

zz. While number of employees has gone down during the POI as compared to the base year, the salary and wages have increased substantially. This shows that the domestic industry is capable of raising the wages in the face of alleged injury.

aaa. The steep reduction in net selling price was apparently applied as a short-term strategy to gain market share and in the post-POI period there has been a 100% increase in price.

[10] China — Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union, WT/DS 425/R.

bbb. The fact that price undercutting was negative during the POI and in the last two years shows that the prices were not reduced by the exporters and exporters were not under any pressure to keep the price below the price of the domestic industry.

ccc. The alleged monthly level of price undercutting has been below 5 per cent for 13 out of 18 months of the POI. Further, petitioner's price has been fluctuating to a great extent, thereby, compelling the import prices of the subject product to follow the trend of domestic prices in line with the level of price undercutting by domestic prices.

ddd. The price undercutting trend cannot be examined on a month wise just because the average price undercutting is negative. If the Authority undertakes such an exercise, then it must examine dumping and injury margin on a monthly basis.

eee. The steep increase in losses during the POI are clearly self-inflicted losses incurred as a result of reduction in price targeted to push the volume and the same cannot be linked to the landed price of imports. The whole movement appears very temporary which should not be considered for any ADD.

fff. The petitioner has suffered some losses in the previous years also except in the base year when the landed price increased and price undercutting was negative. Hence, the losses during the POI cannot be linked to a reduction on the landed price following reduction in NSR of the petitioner. But it is important to note in this context that the factors which were causing injury in the previous two years may have been prevailing in the POI as well, triggering losses in the POI and the same should not be attributed to imports.

ggg. The collective reading of facts relating to injury show that the losses claimed during the period of investigation has no nexus to subject imports and the applicant's claims are blatant lies and misleading claims to get unwarranted duty by raising the state government ownership aspect.

hhh. In the case of an SSR, when data is available for 12 months, there was no reason for the domestic industry to propose a period of only 6 months. The Committee on Anti-Dumping Practices on 4-5 May, 2000 stated that "(a) the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable."

iii. As per Annexure III Para 4 (iv) of the AD Rules, 1995, non-recurring start-up costs incurred as a result of setting up and commissioning of new 40,000 MT Plant-III of the applicant should be excluded while calculating NIP.

jjj. DA must not apply a mechanical formula of 22% return on capital employed. The AD Rules, 1995 transposes the word 'reasonable' in Annexure III but does not define it. What is reasonable is thus an overarching obligation on the part of the DGTR in the backdrop of prevailing economic conditions in the country which

include, inter-alia, the cost of finance that the business actually incurs to raise the capital employed.

kkk. 22% ROCE based on Price Control Order of 1976-77 which considered the said rate as reasonable return was approved in an entirely different context to fix prices of drugs and pharmaceutical products in India as a reasonable return on capital employed. The DA has applied this benchmark to AD Rules, 1995 without having regard to its context which was recorded 2 decades earlier when bank rate of interest (PLR) was 18% which led to consideration of 22% return on capital employed as fair during that period. Allowing such a high 'reasonable return' for arriving at NIP would effectively mean that the fixed assets have not depreciated at all. Further, the CESTAT in Bridge Stone Tyre Manufacturing & Ors. v. Designated Authority had observed that the DA's practice of adopting 22 % ROCE for calculation of NIP was not correct as assuming such a high rate of return gives an inflated picture of price underselling. The DA must use actual cost instead of a notional cost in its assessment of a reasonable rate of interest as is mandated by the ADA.

lll. Actual depreciation, interest, per unit of cost of input and energy as reported in the financials should be considered instead of those provided in the DGTR format. Also, the applicant has computed closing stock for all its products. Owing to changes and simplification in recent times, value of closing stock of entire product range is lumped. The Authority is requested to examine summary sheet to determine whether the actual quantity of Melamine has been taken into account.

mmm. Moreover, the petitioner has got benefits of repair and maintenance as part of cost for old plants and therefore no adjustments for ROCE are warranted as far as plants I and II are concerned.

nnn. The applicant computes closing stock for all its products. Owing to changes and simplification in recent times, value of closing stock of entire product range is lumped.

ooo. In case import price of applicant is below the price of imports from subject countries, the applicant cannot claim suppression/depression due to subject imports.

ppp. Furthermore, Respondent is attaching a report published by Casale whereby it has reported that it developed Plant III of Petitioner viz. GSFC. Plant developed by Casale is for melamine capacity of 40000 tons per year (corresponding to 120 metric tons per day) and a urea section producing the required quantity of urea to feed new melamine plant and a small additional urea export plant (50000 tons per year, corresponding to 150 metric tons per day) to feed the existing LP melamine plants. In other words, plant setup by petitioner is an integrated plant with 40,000MT capacity for Melamine and 50,000MT capacity for Urea where additional urea produced is exported to other activities.

qqq. Additional investment incurred towards the setting up of the additional Urea capacity of 50,000MT in integrated plant must be segregated and discarded while

calculating and determining capital employed towards production of Melamine and consequent NIP. This is because PUC is not Urea and therefore, cost incurred towards production of the raw material Urea must not be taken into consideration and must be segregated from the investment made in production of Melamine. There was no compulsion on domestic industry to set up an integrated plant producing both Melamine and its Urea feedstock when the same could be acquired from other sources as is demonstrated by domestic industry's own imports of Urea. Capital employed towards setting up of Urea production of 50,000MT capacity must be discarded from consideration while considering total capital employed by domestic industry towards Melamine production. Consequently, interest incurred towards setting up of additional Urea capacity of 50,000MT must also be discarded from consideration in addition to any depreciation and amortization expenses calculated on such investment amount. Thus, the NIP should be recalculated as per the aforementioned adjustments.

rrr. The investments incurred towards setting up of the additional production capacity of 10,000 MT of Urea which is exported from Plant-III should be discarded from consideration in calculating NIP by the domestic industry for production and sales of Melamine.

sss. As per market intelligence, Plant 1 and 2 are not operating after the period of April 2020 and the same may be verified. Investment incurred towards such plants which have been discontinued must also be discarded from consideration.

ttt. The cost of production needs a careful examination. The Designated Authority is requested to conduct physical on-spot verification rather than paper verification. The input/output norms between old and new plants are not same and therefore, requires a fresh determination.

uuu. No domestic sales of PUC has been made by exporters (QMC).

vvv. All raw materials have been procured by the exporter (QMC) at market price as is evident from the information submitted through Appendix 11. It is alleged that due to exporter's relationship with QAFCO which has excess urea supply, costs have been efficiently controlled by the exporter. However, a mere synergy between an upstream and downstream industry cannot be considered as evidence of distortion in raw material prices.

H.2 Submissions of the domestic industry:

58. As regards the injury and causal link, the domestic industry has submitted as follows:

a. The Authority is requested to undertake cumulative analysis of imports, since the conditions of cumulative assessment are satisfied.

b. Volume of imports from the subject countries have increased in absolute as well as in relative terms.

c. Import prices are depressing the prices of the domestic industry and the domestic industry is selling at losses.
d. Capacity utilization of the domestic industry has declined sharply in the POI despite an increase in demand.
e. The domestic industry could not increase its sales in the same proportion as the increase in production.
f. Production of the domestic industry also had to be curtailed due to the inability of the domestic industry to dispose of inventories, despite the increase in demand.
g. The market share of the domestic industry could have been around 68% as against actual share of 32% despite there was sharp increase in demand for the subject goods.
h. The domestic industry has suffered exponential losses since 2017-18 which have increased significantly in the POI.
i. Decline in profits has resulted in decline in cash profit, profit before interest and tax and return on investment.
j. The growth of the domestic industry in the price parameters has been negative across the injury period. However, the volume parameters have recorded a positive growth in the POI as the production in the new plant commenced.
k. Given the significant change in the prices within the POI itself, it would be highly misleading to do a weighted average comparison. The domestic industry therefore requests determination of price undercutting by undertaking monthly analysis. It would be seen that the price undercutting is in fact positive.
l. The production of the domestic industry was stopped due to the onset of COVID-19 only for less than a month in the entire POI of 18 months.
m. Demand has increased over the injury period with minor decline in the period of investigation.
n. The domestic industry has made very minimal exports in the period of investigation and has provided segregated data for the domestic operations.
o. There are no trade restrictive practices or change in pattern of consumption.
p. Productivity has moved in line with the increase in production and thus the injury to the domestic industry is not on account of this factor.
q. Data provided by the domestic industry relates only to the performance of the product under consideration and not any other products.
r. Imports from China are also above de-minimis limits and are already attracting anti-dumping duty.
s. The applicant has compared each bill of entry with the appropriate annual non-injurious price, and monthly net selling price to show that they are only claiming adverse impact of low-priced imports which are affecting its selling prices. Reliance

has also been placed on the decision pronounced in the case of Kothari Sugars & Chemicals Limited v. Designated Authority[11].

t. A return of 22% on capital employed on the old and depreciated plant is too low.

u. These returns would make any new investment sick and unviable.

v. A mere decline in imports from one of the subject countries is not a condition for de-cumulation of imports. Moving share of different countries is in fact evidence of inter-se competition.

w. The domestic industry is the sole producer of the PUC in India where there is sufficient demand for the domestic industry to the full extent of its capacity. Therefore, it should not have suffered due to any development in the global market.

x. On the submission on comparison of the Authority's examination in the 1st sunset review of imports of subject goods from European Union, Iran, Indonesia and Japan, the POI of the present investigation and of that investigation are different and therefore, have no bearing on each other.

y. It is the imports in the Indian market that impact the performance of the domestic industry and not exports.

z. Losses suffered due to dumped imports cannot be attributed to the additional capacity investment made by the domestic industry. Even if third plant of the domestic industry is ignored, domestic industry has suffered losses in the Plant I and Plant - II as well.

aa. Injury has been claimed only in the POI and not over the entire injury period.

bb. The applicant has not gone for pilot or commercial production yet. For Melamine cyanurate, a small quantity has been produced on a pilot scale. The total Indian market size is limited to about 1000 MT in a year and is targeting for 15-20% of this market potential with an idea towards import substitution.

cc. Majority of the turnover of the industrial sector comes from Melamine and Caprolactam and the applicant is suffering injury in both the products.

dd. The domestic industry is forced to export to prevent pile up of inventories.

ee. The applicant transfers the raw material (urea) at cost. Such being the case, the operating practice of the Authority clearly prescribes that net fixed assets of captive inputs should be added to the direct net fixed assets of the product under consideration to arrive at total fixed assets.

ff. In the sunset review investigation of antidumping duty imposed on the imports of Melamine from China PR, the applicant had already stated that imports from other countries too are at dumped and injurious price are causing injury to the domestic industry.

gg. Demand of the product has remained largely unaffected due to COVID-19 and it has had a very marginal impact on the performance of the domestic industry and

[11] 2005 SCC OnLine CESTAT 1085.

imports. Other interested parties should be directed to show the "effects of COVID-19".

hh. Due to the presence of dumped imports the domestic industry is not able to operate its Plants I and II post-April 2020.

H.3 Examination by the Authority

Cumulative assessment

59. Article 3 of the Anti-dumping Agreement and Annexure II of the AD Rules, 1995 provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:

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

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

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

a. Whether the product supplied by different parties are like articles and are comparable in properties?

b. Whether domestically produced subject goods and the imported products are interchangeable?

c. Whether there is direct competition between the domestic product and the imported product and inter-se between the imported products?

d. Whether the consumers are using domestic material and imported material interchangeably and the exporters and the domestic industry have sold the same product to same set of customers?

e. Whether the import price from subject countries have moved in tandem?

61. The Authority notes that:

a. The subject goods are being dumped into India from the subject countries. The margins of dumping from each of the subject countries are more than the de minimis limits prescribed under the AD Rules, 1995.

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

c. Further, the Authority notes that subject product from the different countries are like articles and as mentioned above the subject goods are also a like article to the goods produced by the domestic industry and direct competition exists not only between the imported subject goods but also the like articles offered by the domestic industry. The imported subject goods and the goods produced by the domestic industry are used interchangeably.

62. It has been submitted that imports from Qatar have declined and should not be cumulated for the assessment on injury. The Authority notes that mere decline in imports from one of the subject countries is insufficient to not consider cumulative assessment of imports. What is relevant is whether the imports from subject countries compete inter se. Moving share of imports from different countries is in fact evidence of inter-se competition among the imports.

63. In view of the above, the Authority has cumulatively assessed the effects of dumped imports of subject goods from European Union, Japan, Qatar, and United Arab Emirates.

64. Certain interested parties have also raised issues on inclusion of certain cost elements in the NIP. The Authority notes that these concerns have been examined by the Authority during the course of this investigation and the Authority while computation of the NIP has computed it in accordance with Annexure III of the AD Rules, 1995 as per consistent practice. Further, the concern of interested parties with respect to the plant shutdown has been duly taken care of by applying the principle of capacity optimisation as per Annexure-III to the AD Rules, 1995.

65. Rule 11 of the AD Rules, 1995 read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry by "…. taking into account all relevant facts, including the volume of dumped imports, their effects on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles.". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability,

net sales realization, the magnitude, and margin of dumping, etc. have been considered in accordance with Annexure II of the AD Rules, 1995.

66. The Authority has taken note of the various submissions made by the domestic industry and other interested parties on injury and causal link during the course of the investigation and has examined the same in accordance with the AD Rules, 1995 and has considered submissions of all the interested parties to this final finding. The injury analysis made by the Authority in the succeeding paras addresses the submissions made by the domestic industry and other interested parties.

67. The Authority notes that it is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration, while some others may not. The Authority considers all injury parameters and, thereafter, concludes whether the domestic industry has suffered injury or is likely to suffer injury on overall basis due to dumping. The Authority has examined the injury parameters objectively considering the facts and arguments submitted by the domestic industry and other interested parties.

68. On the submission that the domestic industry has stopped production of the subject goods in its Plants I and II, the Authority notes that the domestic industry has submitted segregated data for Plants I, II and III. The domestic industry has operated Plant III in the period April 2020 to September 2021 and Plant I and Plant II have not been in operation since April 2021. From the available evidence, it can be perused that the cost of production of Plant I and Plant II is higher in comparison to Plant III. Therefore, the domestic industry has majorly operated only Plant III which has a lower cost of production. At the same time, the Authority notes that the capacity utilization of the domestic industry's individual Plant III in the period April 2020 to September 2021 has been 86%.

69. On the submissions of the domestic industry and the other interested parties regarding return on capital employed, the Authority holds as per its consistent practice 22% as return on capital employed for the purpose of determination on non-injurious price.

70. Certain interested parties have also raised issues on inclusion of certain cost elements in the NIP. The Authority notes that these concerns have been examined during the course of the investigation and at the stage of verification and the NIP has been computed in terms of the principles mentioned in Annexure III of the AD Rules, 1995 and as per its consistent practice.

71. With regard to the claim that the losses suffered by domestic industry is due to over-supply in the global market, it is seen that despite the rise in demand, the domestic

industry even though it is the sole producer, has not been able to align its prices adequately to the movements in cost due to the low-priced imports from the subject countries.

72. It has been contented that the most of imports from Qatar in the previous years were made by the applicant itself. The Authority has considered only the manufactured goods produced and sold by the applicant for the purpose of injury analysis. Trading sales of the applicant have not been included in the data considered for injury analysis.

73. As regards the submission on price of urea of the applicant, it is noted that the same is taken from the books of accounts maintained by the domestic industry. There is no reason to disregard the value as per cost records only because it could be imported at a different price range. It is well settled that the domestic industry is required to be seen as it exists and not as one operating under ideal conditions. It is also noted that the price of urea for the purpose of fertiliser production in any case cannot be considered for production of melamine.

74. It has been argued that the injury to the domestic industry is due to the significant borrowing cost and depreciation incurred by the domestic industry due to the capacity expansion undertaken by it. The Authority notes that it is quite obvious that with capacity expansion, a producer would face some additional expenses on account of depreciation and interest and the plant would take some time to stabilize. However, that does not debar a producer from seeking remedy from dumped imports if it has suffered injury attributable to dumped imports. In any case, the domestic industry has suffered cash losses and loss before interest and tax as well. Further, the domestic industry also suffered losses in the previous year as well due to dumped imports from other countries. Had the injury been due to the capacity expansion undertaken by the domestic industry, it would have not suffered losses in the year 2018-19 as well. It is also seen that the cost of sales of the domestic industry increased up to the year 2018-19 but has declined in the POI.

75. As regards the allegation made by the other interested parties, that duties will create a monopolistic situation, it is noted that anti-dumping duties have been levied on the dumped imports from China and other countries in the past. Even after the imposition of duties, the imports from China had continued. Therefore, if the duties are recommended, they will not lead to elimination of imports from the subject countries but just ensure that the imports will happen at fair prices. Accordingly, the Authority holds that there is no reason to believe that anti-dumping duty would lead to a monopolistic situation in the country.

H.3.1. Volume Effect of Dumped Imports on Domestic Industry:

a. Assessment of Demand

76. Authority has determined demand or apparent consumption of the product in India, as the sum of domestic sales of the domestic industry and imports from all sources.

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI	
						Actual	Ann
1	DI Capacity	MT	15,000	15,000	15,000	82,500	55,000
	Trend	Index	100	100	100	550	367
2	Domestic industry	MT	***	***	***	***	***
	Trend	Index	100	100	91	256	171
3	Imports from subject countries	MT	17,893	27,574	37,380	58,652	39,101
4	Imports from country attracting ADD	MT	23,110	30,288	34,016	19,301	12,868
5	Import from other countries	MT	7,389	4,922	3,660	4,441	2,960
6	**Total demand/ consumption**	**MT**	***	***	***	***	***
	Trend	Index	100	122	140	191	127

77. It is seen that the overall demand for the product has increased over the injury period but has declined during the POI but was nevertheless significantly above the base year level. As against the demand of 81,121 MT in the POI, domestic industry was able to utilize only 55% of its total capacity.

b. Import volume in absolute and relative terms

78. Regarding the volume of 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 of the subject product in India. The volume of imports of the subject goods from the subject countries have been analysed as under: -

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI	
						Actual	Ann
1	Import from subject countries	MT	17,893	27,574	37,380	58,652	39,101
a	European Union	MT	6,723	7,347	12,669	24,264	16,176
b	Japan	MT	740	735	1,900	9,143	6,095
c	Qatar	MT	10,411	19,092	16,700	13,480	8,987

d	United Arab Emirates	MT	20	400	6,110	11,765	7,843
2	Imports from subject countries in relation to						
a	Production	%	120.21%	181.59%	263.90%	126.11%	126.11%
	Trend		100	151	220	105	100
b	Demand	%	28.08%	35.32%	42.00%	48.20%	48.20%
	Trend	Index	100	126	150	172	172
c	Total imports	%	36.98%	43.92%	49.80%	71.18%	71.18%

79. It is seen that: -

a. Total imports from the subject countries have increased in absolute terms over the injury period. The total quantum has more than doubled in the POI in comparison to the base year level.

b. Imports have increased in relation to production, consumption, and total imports in India.

c. Despite a decline in demand /consumption of subject goods in India during the POI by 7,872 MT as compared to 2018-19, the imports from subject countries have soared by 1,721 MT.

H.3.2 Price Effect of the Dumped Imports on the Domestic Industry

80. Regarding the effect of the dumped imports on prices, the Designated Authority is required to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For this analysis, the cost of production, net sales realization (NSR), and non-injurious price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject countries.

a. Price undercutting

81. To determine whether the imports are undercutting the prices, the Authority has undertaken comparison between the landed price of the imports and the average selling price of the domestic industry. The landed price of imports, domestic prices and margin of undercutting are shown as per the table below: -

SN	Particulars	UOM	European Union	Japan	Qatar	UAE	Subject countries as whole

1	Landed price	Rs/MT	76,872	75,565	71,186	75,253	75,037
2	NSR	Rs/MT	***	***	***	***	***
			100	100	100	100	100
3	Price undercutting	Rs/MT	***	***	***	***	***
4	Price undercutting	%	***	***	***	***	***
5	Range	%	(0-10)%	(0-10)%	0-10%	(0-10)%	(0-10)%

82. It is seen that the landed price of imports and selling price of the domestic industry are almost at the same level and the landed price is marginally higher than the selling price. The price undercutting is slightly negative. The domestic industry submitted that given the significant change in the prices within the POI itself, it would be highly misleading to do a comparison based on weighted average basis. The Authority has therefore examined the price undercutting on monthly basis for the POI.

SN	Particulars	Import Volume MT	Landed Price (Rs/MT)	Net selling price (Rs/MT)	Price Undercutting		
					Rs/MT	(%)	Range
1	Apr-2019	2,910	85,486	***	***	***	0-10%
2	May-2019	4,937	83,112	***	***	***	10-20%
3	Jun-2019	3,932	80,941	***	***	***	(0-10)%
4	Jul-2019	4,056	75,901	***	***	***	0-10%
5	Aug-2019	3,997	74,965	***	***	***	(0-10)%
6	Sep-2019	3,901	76,455	***	***	***	(0-10)%
7	Oct-2019	3,500	74,789	***	***	***	(0-10)%
8	Nov-2019	5,061	72,910	***	***	***	0-10%
9	Dec-2019	3,745	74,323	***	***	***	(0-10)%
10	Jan-2020	3,533	71,512	***	***	***	10-20%
11	Feb-2020	3,404	71,749	***	***	***	10-20%
12	Mar-2020	3,081	73,836	***	***	***	10-20%
13	Apr-2020	3,074	74,771	***	***	***	0-10%
14	May-2020	1,802	79,644	***	***	***	(0-10)%
15	Jun-2020	1,048	80,044	***	***	***	(10-20)%
16	Jul-2020	950	67,150	***	***	***	(0-10)%
17	Aug-2020	1,990	64,569	***	***	***	(0-10)%
18	Sep-2020	3,730	63,156	***	***	***	0-10%
	Average	58,652				***	0-10%

83. It is seen that on a monthly weighted average basis, the landed price of imports is below the selling price of the domestic industry resulting in a positive price undercutting.

b. Price Suppression/Depression

84. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority has examined the changes in the landed price of imports, and costs and prices of the domestic industry over the injury period.

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Cost of Sales	₹/MT	***	***	***	***
	Trend	*Indexed*	100	112	127	119
2	Selling Price	₹/MT	***	***	***	***
	Trend	*Indexed*	100	102	111	80
3	Landed Price	₹/MT	90,422	97,709	1,07,679	75,037
	Trend	*Indexed*	100	108	119	83

85. It is seen that the domestic industry had made profits in the base year. The cost of sales of the domestic industry increased from the base year to year 2018-19 but declined in the POI. The domestic industry also increased its prices till the year 2018-19 but prices have declined significantly in the POI. However, it is seen that the increase in selling price till the previous year was not in line with the increase in cost of production. While the cost increased by 27 index points, the selling price increased by 11 index points.

H.3.3 Economic Parameters Relating to the Domestic Industry

a. Production, capacity, capacity utilization and sales

86. The performance of the domestic industry regarding production, domestic sales, capacity, and capacity utilization is given in the table below: -

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI	
						Actual	Ann
1	Capacity	MT	15,000	15,000	15,000	82,500	55,000
2	Production	MT	14,885	15,184	14,164	46,508	31,005
3	Capacity utilisation	%	99.23%	101.23%	94.43%	56.37%	56.37%
4	Domestic Sales	MT	***	***	***	***	***
	Trend	Indexed	100	100	91	256	171

87. It is seen that:

a. Domestic industry has expanded its capacity by 40,000 MT on which it has begun commercial production during the POI. The capacity of the domestic industry after capacity expansion still remains lower than the total demand in the country.

b. Production of domestic industry increased in 2017-18 and then marginally declined in the 2018-19. However, with the commencement of production in the new plant during the POI, the production has increased substantially.

c. With the commencement of new plant, capacity utilisation has declined in the period of investigation and domestic industry operated with significant idle capacities in the POI as it was forced to close two of its plants.

d. Domestic sales declined till the year 2018-19 but with the commencement of production in the new plant, the domestic sales have increased in the POI. It is however seen that the increase in domestic sales is not in line with the increase in production and the rise in demand in the country.

b. Market Share

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

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Domestic Industry	%	***	***	***	***
	Trend	Indexed	100	81	65	134
2	Subject countries	%	28%	35%	42%	48%
	Trend	Indexed	100	126	150	172
3	Country attracting ADD	%	36%	39%	38%	16%
	Trend	Indexed	100	107	105	44
4	Other countries	%	12%	6%	4%	4%
	Trend	Indexed	100	54	35	31

89. It is seen that the market share of the domestic industry declined till the year 2018-19. However, with the commencement of production in the new plant in the POI, the market share of the domestic industry has increased in the period of investigation. At the same time, the market share of imports from subject countries has increased consistently and considerably in comparison to the base year level.

c. Inventories

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

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Opening Inventory	MT	***	***	***	***
2	Closing Inventory	MT	***	***	***	***
3	Average Inventory	MT	***	***	***	***
	Trend					
4	Opening inventory	Indexed	100	30	13	48

5	Closing inventory	Indexed	100	43	157	3,242
6	Average inventory	Indexed	100	33	47	794

d. Profitability, return on investment and cash profits

91. The data relating to profitability, return on investment and cash profits of domestic industry are shown in the following table

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI	
						Actual	Ann
1	Cost of sales	₹/MT	***	***	***	***	***
	Trend	Indexed	100	112	127	119	119
2	Selling price	₹/MT	***	***	***	***	***
	Trend	Indexed	100	102	111	80	80
3	Profit / Loss	₹/MT	***	***	***	***	***
	Trend	Indexed	100	(17)	(66)	(356)	(356)
4	Cash profits	₹/MT	***	***	***	***	***
	Trend	Indexed	100	-7	-53	-185	-185
5	PBIT	₹/MT	***	***	***	***	***
	Trend	Indexed	100	-15	-58	-295	-295
	Total for domestic operations						
6	Profit / Loss	₹ Lacs	***	***	***	***	***
	Trend	Indexed	100	(17)	(60)	(911)	(608)
7	Cash Profit	₹ Lacs	***	***	***	***	***
	Trend	Indexed	100	(7)	(48)	(473)	(316)
8	PBIT	₹ Lacs	***	***	***	***	***
	Trend	Indexed	100	(15)	(53)	(755)	(503)
9	ROCE	%	***	***	***	***	***
	Trend	Indexed	100	(13)	(19)	(47)	(47)

92. It is seen that:

a. Cost of sales and selling price of the domestic industry increased till 2018-19 but declined in the POI. However, while cost of sales has increased as compared to the base year, the domestic selling price has declined since 2018-19 and has continued to slump during the POI.

b. Domestic industry earned cash profit per unit and profit before interest and tax per unit in the year 2016-17 which turned negative thereafter. The cash losses and loss before interest and tax have increased over the injury period.

c. Similar trend has been observed in profits, cash profits and profits before interest and tax as all have turned negative in the period of investigation.

d. The return on capital employed (ROCE) of the domestic industry increased till 2016-17 but has turned negative thereafter. The return on capital employed was significantly negative in the POI.

e. Employment, wages, and productivity

93. The situation of the domestic industry regarding employment, wages and productivity was as below: -

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI	
						Actual	Ann
1	No of employees	Nos.	***	***	***	***	***
	Trend	Indexed	100	96	99	92	92
2	Salary & Wages	₹ Lacs	***	***	***	***	***
	Trend	Indexed	100	118	105	275	184
3	Productivity per day	MT/Day	43	43	40	89	89
4	Productivity per Employee	MT/Nos	***	***	***	***	***
	Trend	Indexed	100	107	96	338	225

94. It is seen that the employment levels and wages of the domestic industry have fluctuated over the injury period. The wages of the domestic industry have increased over the injury period. The productivity per day and productivity per employee has increased with the increase in production in the POI.

f. Growth

95. Examination of growth parameters of the domestic industry during the injury period is shown below-

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Production	Y/Y	-	2.01%	-6.72%	118.90%
2	Sales	Y/Y	-	-0.38%	-8.80%	87.92%
3	Profit/(Loss) per unit	Y/Y	-	-116.93%	-291.51%	-436.90%
4	Inventory	Y/Y	-	-66.58%	39.65%	1601.20%
5	Market Share	Y/Y	-	-18.67%	-20.00%	106.16%
6	Profit before Tax	Y/Y	-	-116.87%	-257.07%	-908.96%
7	Cash Profit	Y/Y	-	-106.58%	-629.73%	-556.92%
8	PBIT	Y/Y	-	-114.56%	-260.68%	-858.27%

9	ROI	Y/Y	-	-113.10%	-45.59%	-148.34%

96. The data presented in the table above shows that while the domestic industry has registered positive growth in volume parameters in the POI, its growth has been adversely affected in profit, cash profit and return on capital employed etc.

g. Level of dumping and margin of dumping

97. It is seen that the dumping margin in the imports from the subject countries is not only positive, but also quite significant.

h. Ability to raise fresh investment.

98. The applicant has submitted that it has just expanded its capacity and therefore adequate protection is required to be provided to the industry. Due to the competition being faced by the domestic industry from the dumped imports, the operations of the domestic industry have been impacted and it has suffered huge financial losses.

i. Factors affecting domestic prices.

99. The imports from subject countries hold a significant share in the market. The landed price of imports has declined significantly in the POI and is much below the selling price and cost of sales of the domestic industry.

j. Magnitude of injury margin

100. The Authority has determined the NIP for the domestic industry based on the principles laid down in the Rules read with Annexure III, as amended. Injury margin for producers/exporters and other producers/ exporters has been determined considering the landed price and NIP so determined. The table below shows the injury margin. It is seen that the injury margins are significant.

SN	Particulars	NIP	Landed price	Injury margin		
		USD/MT	USD/MT	USD/MT	%	Range
1	**Qatar**					
a	Qatar Melamine Company	***	***	***	***	20-40
b	Any other	***	***	***	***	40-60
2	**European Union**					
a	Any	***	***	***	***	20-40
3	**Japan**					
a	Any	***	***	***	***	20-40
4	**United Arab Emirates**					

a	Any	***	***	***	***	20-40

H.3.4 Overall assessment of injury

101. The examination of the imports of the product under consideration and performance of domestic industry clearly shows that:
   a. The volume of imports from subject countries has increased both in absolute terms as well as in relation to production and consumption in India.
   b. A month-wise analysis shows that imports are undercutting the prices of the domestic industry.
   c. The imports have depressed the prices of the domestic industry.
   d. The domestic industry has expanded its capacity over the injury period. Therefore, the production, capacity utilization and domestic sales of the applicant have increased.
   e. Increase in domestic sales is not in line with the increase in production and the rise in demand in the country.
   f. The market share of the applicant domestic industry is significantly below the share which it can cater.
   g. The domestic industry has suffered losses in the period of investigation.
   h. The domestic industry has also suffered cash losses and is operating with negative return on investment.
   i. Although the domestic industry has registered a positive growth in the volume parameters but its growth in the price parameters has been negative.
   j. Due to the competition being faced by the domestic industry from the dumped imports, its operations have been impacted and it has suffered huge financial losses.
   k. The dumping margin is positive and significant.

102. In view of the foregoing, the Authority concludes that the domestic industry has suffered material injury.

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103. The Authority is required to examine whether any known factors other than dumped imports have also caused injury to the domestic industry at the same time. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It was examined whether these listed factors other than dumped

imports could have contributed to the injury to the domestic industry found by the Authority.

a. Volume and price of imports from third country

104. The imports from subject countries accounts for 71% of total imports into India. Besides the subject countries, there are significant imports above di-minimis limit from China PR as well. However, these imports were attracting anti-dumping duty in the POI and the landed prices of Chinese imports with ADD were higher than the domestic selling price of the domestic industry.

b. Contraction in Demand and / or Change in Pattern of Consumption

105. Demand of the subject goods has shown consistently increased till 2018-19 and then has declined marginally in the POI, however, it is still above the demand in the base year. Therefore, demand in the country should not be a primary factor impacting the sales of the domestic industry.

c. Developments in technology

106. The Authority notes that technology for production of the product has not undergone any material change over the injury period. Besides, the domestic industry has recently set up a new plant. Therefore, developments in technology are not a possible cause of injury suffered by the domestic industry.

d. Trade restrictive practices

107. The Authority notes that none of the interested parties have made any claim regarding the possible existence of trade restrictive practices which could have caused injury to the domestic industry. It is also noted that the domestic industry is the sole producer of the product in the country.

e. Export performance

108. The volume of export sales is hardly 3% of total sales of the domestic industry and therefore cannot have any significant impact on the performance of the domestic industry.

f. Performance of other products

109. It is noted that the domestic industry is producing and selling a large number of products. The Authority has considered segregated data relating to performance of the product under consideration. Therefore, performance of other products produced and sold by the applicant is not a possible cause of the injury to the domestic industry in this investigation.

g. Conditions of competition

110. No facts or contention were brought before the Authority regarding the existence of trade restrictive practices which could have contributed to the injury to the domestic industry

J. INDIAN INDUSTRY'S INTEREST, PUBLIC INTEREST & OTHER ISSUES

J.1 Submissions by other interested parties

111. As regards public interest, the interested parties have submitted as follows:

a. Public Interest will be adversely affected by imposition of the duty, severely impacting the users and downstream industry most of which are from the MSME sector.

b. There has already been duty in place for 16 years. A new investigation immediately after some capacity addition done by the sole producer is intended only for profiteering.

c. Melamine forms about 17 to 22% share of the cost of the end product for most users and even a 10% duty can lead to a commensurate increase in such Melamine cost and overall cost. Laminate producers do not enjoy any considerable margin and stiff competition from imported products in the market would make it difficult to pass on such cost increases to the users and will lose the market.

d. The potential of Indian laminate industry could not be explored fully primarily because of historical application of anti-dumping duty on Melamine to protect one producer namely GSFC. Now there is a new case yet again despite the facts remaining same in terms of demand-supply gap.

e. The domestic industry cannot cater to the demand in the country and the consumer of the subject goods are required to pay for the excess demand, so ever greening of duties must be avoided.

f. Antidumping provisions should not be allowed to be used as a tool for creating monopolistic behavior as the domestic industry is a sole producer.

g. Users have been forced to import because of demand-supply gap. The new capacity after additions is 55000 MT which is not sufficient to meet the current demand about 81000 MT and there is a gap in the range of 25000MT to 35000MT currently.

h. The domestic industry does not appear to be working in the best interest of the consumers as it is attempting to expand its business into Melamine derivates which are more profitable by captively using the required quantities of Melamine.

i. A large number of MSME industries consume phenol and melamine. There is wide supply-demand gap ranging 40000-50000 tons and the price rise during this month has so far happened in two tranches of Rs.5/kg. The applicant's current price is Rs.92/kg but without any offer of volume and based on current demand and supply gap, it is highly likely that these will cross Rs.100/kg during the remaining part of this year. The domestic industry clamours for ADD to earn superlative margins in

business and has resorted to projecting inflated injury in order to warrant its imposition.

j. If the anti-dumping measures are not lifted from Melamine and Phenol, the industry would rise to at least USD 500 million in two years being free from unnecessary controls and costs.

k. The consumer industries in India have made investments relying on covenants of GATT that guarantees free access to global market on competitive prices and these cannot be bullied because there is a sole raw-material producer in India.

l. DGTR thinks that anti-dumping duty is a matter of right of domestic industries and it is creating a 'LIS' between domestic industries and consumers so that domestic industry can force the central government to impose the duty without examining large public interest.

m. The new initiative of assessment and determination of 'public interest' in recommendations has no legal force and is not vested in DGTR through anti-dumping duty rules.

n. The Authority has not analysed the interested parties' arguments with respect to production of melamine derivatives which is more profitable. By captively producing the Melamine quantities required to make these products while at the same time seeking anti-dumping duties on imports of Melamine, the Domestic Industry is trying to gain a competitive advantage over other producers of these downstream products in India, effectively trying to create a monopoly in the domestic market. This is by no means in the interest of the user industry and citizens of India at large and should not be allowed. Indeed, the present conduct of the Domestic Industry indicates that it is utilizing anti-dumping measures more as a business strategy tool under the guise of seeking relief against unfair trade practices.

o. Further, despite prices of imports from China PR being far higher than the selling price of the Petitioner, users continued to import from China PR. Similarly, prices of imports from the subject countries were also higher than that of the Petitioner but were able to find a market in India.

p. Despite a finding of no injury in 2018 to the applicant, the Authority has initiated this investigation in total disregard of the interests of the downstream user industry.

q. Antidumping duty on this product for the last two decades has pushed the cost of laminates and melamine wares, thereby making the finished goods of downstream industries unviable and has opened up domestic market to the overseas competitors which is evidenced by higher imports of those finished products and consequent imposition of antidumping duty on those products.

J.2 Submissions by domestic industry

112. As regards public interest, the domestic industry has submitted as follows:

a. Examination of public interest should consider interests of domestic industry, interests of user industry as well as the end consumers. As such, duties are necessary to avoid unfair competition prevailing in the Indian market.
b. While users are making a plea that there has been duty in force for the past 16 years, the fact remains that the users had cleverly evaded duties imposed till the 2nd Sunset Review investigation against China PR.
c. It is in the interests of the users that there exists a healthy domestic industry.
d. Impact of antidumping duty on the eventual end-product is grossly insignificant.
e. Users have provided no information on how there will be adverse effect of duty on them. Also, there is no past-history of adverse effect of antidumping duty on the users.
f. Representatives of Century Ply Limited admitted in the oral hearing that burden of duties is eventually passed onto the end consumers and the immediate user industry does not actually bear the cost. It was further stated that the impact of duties is hardly 10 paisa for a cup.
g. The domestic industry has not consumed the product captively. The capacity expansion of Melamine was not based on Melamine derivatives as it constitutes very less volume and consumption in Indian market.

J.3 Examination by Authority

113. The Authority notes that the purpose of anti-dumping duty, 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 measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.

114. The Authority issued initiation notification inviting views from all interested parties, including importers, consumers and others. The Authority also prescribed a questionnaire for the users/ consumers to provide relevant information with regard to present investigation, including any possible effects of anti-dumping duty on their operations. However, it is noted that barring the domestic industry, no other parties have made any submissions with regard to public interest.

115. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the

domestic industry. On the contrary, imposition of antidumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

116. Some interested parties have claimed that imposition of anti-dumping duty will adversely affect the interests of the users belonging to the MSME sector. It is noted that the purpose of imposition of anti-dumping duty is to protect the domestic industry from unfair and dumped imports and thereby create a level playing field for the domestic producers. Users have not provided sufficient documents to show the adverse impact of duties.

117. The users have submitted that imports have happened due to demand and supply gap. The Authority considers that, as held by the Hon'ble CESTAT in the matter of DSM Idemitsu Limited v. Designated Authority[12] and thereafter in a number of other cases, demand-supply gap in country does not bar a domestic industry from seeking redressal from dumped imports and does not justify dumping. Foreign producers can always meet the Indian demand by selling the product at un-dumped prices. Even after the imposition of antidumping duty, the imports are not restricted in the country. The users are free to import the goods at fair price.

118. On the submission of use of expanded capacity intended by domestic industry for captive use, the Authority notes that the applicant has admitted that it is planning to venture into Melamine cyanurate for which it had produced on a pilot scale. However, as per the information provided, the total Indian market size of Melamine derivatives is limited to about 1,000 MT in a year and the domestic industry is targeting for 15-20% of this market potential with an idea towards import substitution. Considering the capacity expansion of 40,000 MT undertaken by the applicant and the demand of the derivatives, it cannot be considered that the capacity expansion has been undertaken solely for Melamine derivatives.

119. It has been contended that producers have made investments considering free access to global markets. The Authority notes that the viability of the consumers cannot be dependent on access to raw material at unfair and dumped prices. The applicant has filed an application with legitimate claim for fair market. Anti-dumping duties have been imposed in past on the product under consideration. However, the other interested parties have not been able to establish any adverse impact of the history of past duties.

120. The Authority notes that the underlying basis of GATT is to promote inclusive growth. At the same time, it must also be appreciated that the contracting parties were well aware

[12] 2000 SCC OnLine CEGAT 1075.

of the damage unfettered trade would cause to them if foreign exporters/producers resorted to unfair means and therefore, to discipline such practices explicitly included provisions regarding anti-dumping and countervailing measures. The AD Rules, 1995 ensures that neither the domestic industries get any undue advantage nor do they face an unfair competition.

121. The 2018 investigation had a different period of investigation and each investigation has to be adjudged on its own merits in the light of the prevailing factors. Further, the subject countries in that investigation were different than the instant investigation. Therefore, a negative recommendation in the previous case has no bearing on the present investigation.

122. It has been contended that the imposition of duty will have significant impact on the end consumers. The Authority notes that while the users have contended the adverse impact of duty, no quantified information has been provided. Contrarily, applicant domestic industry has provided quantified information on the impact of anti-dumping duty. It is seen that the impact of the anti-dumping duty is very minimal.

123. As per the trend of import price into India and global urea prices provided by the applicant in its comments to disclosure, it is seen that the increase in import price to India has been significantly higher than the global urea prices. While the issue may be due to the disruption caused in freight, it is also recognized that a presence of healthy domestic industry is ultimately in the interest of the users as users can rely on domestic industry in such situations. The recent experience in the COVID-19 period has also shown that the public at large is likely to suffer, if the products are not sufficiently available in the domestic market.

K. POST DISCLOSURE COMMENTS.

124. The Authority notes that most of the submissions made by the interested parties in response to the disclosure statement are repetitive in nature and the interested parties have largely reiterated their earlier submissions, which have already been examined and addressed by the Authority. Following are the additional submissions made by the domestic industry and other interested parties on the disclosure statement.

K. 1. Submissions by other interested parties

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

a. The applicant has failed to inform the difference between non catalytic high-pressure process & catalytic low-pressure process and if they manufacture Assay minimum 99.5% and if there is any difference between 99.5% & 99.8%.

b. The applicant's third plant achieved a capacity utilization of 86 % in a relatively short period which shows there was no injury as alleged by the applicant.
c. The Authority should note that it is critical to analyze post-POI conditions of the domestic industry and the situation of imports etc. to make an assessment of likelihood of continuation or recurrence of injury to the domestic industry and it had done the same in their earlier SSR final findings in 2018 and clearly concluded that the economic and financial parameters of the domestic industry were stable and healthy and there was no injury or likelihood of injury.
d. Regarding the impact of COVID-19 on the applicant, the Authority has only focused on whether the operations of the domestic industry continued during the POI were impacted by the pandemic, without analysing month-to-month impact on sales quantity, value, production, demand, etc. There is a tangible and demonstrable difference between remaining operational through the pandemic and being unaffected by the pandemic during operations.
e. Regarding the start-up impact, it is submitted that capacity utilization alone cannot be considered the decisive factor in determining whether the comparison between the POI and the rest of the injury period is reasonable as the applicant cannot be expected to reap the benefits of its increased capacity within this short span of time.
f. The Authority has not considered other factors such as poor demand and upward price movement of raw materials which could have impacted the performance of the applicant.
g. The data on which the Authority has relied has become redundant as the Authority is required to make a prospective determination of normal value, dumping margin and non-injurious price and injury to the domestic industry from the alleged dumping.
h. Fact that imports were "facilitated" by the applicant has not been disclosed to the interested parties in the application or during the investigation. Further, no data regarding either the quantity or value of imports made by the applicant has been made available to the other interested parties.
i. It is not enough if the domestic industry does not import during the POI especially in a situation where the applicant has claimed a continuing injury during previous years as well. In an earlier investigation[13], the applicant had submitted that it had imported the PUC from Qatar.
j. Product is available in different sizes (25 kg, 500 kg and 1000 kg). There is a difference in price due to difference in packing which has not been mentioned by the applicant.
k. While imports have increased by less than 5%, sales of the domestic industry have increased by nearly 80% in the POI compared to immediately preceding year i.e. 2018-19. In the same period, the applicant's market share has increased by approximately

[13] Case No. AD/SSR 16/2020 Sunset review Concerning Anti-dumping Duty on imports of Melamine from China PR dated 23rd August 2020.

105%. Therefore, the increase in imports did not have volume effect on the sales of the domestic industry.

l. The volume of imports primarily increased in 2017-18 by 54% and 2018-2019 by 36%, when the domestic industry was "facilitating" imports. In the POI, the increase was a mere 5% much less than the 88% increase in the volume of domestic sales of the domestic industry and the 16,841 MT increase in production. There has been a significant decline in imports from Qatar in both absolute and relative terms in the POI. At the same time, market share of the petitioner has doubled in the POI which further volume effect due to imports from Qatar.

m. Regarding cumulative assessment of imports from Qatar, it is submitted that there has been a drastic decline in the volume of imports from Qatar as compared to subject countries. During the injury period, the volume of imports from Qatar decreased by 14%, whereas imports from EU, Japan and UAE increased by 139%, 724% and 12,792% respectively. In the POI, imports from Qatar declined by 46% in comparison to the previous year. During that same period, imports from EU, Japan and UAE increased by 28%, 221% and 28% respectively. Such drastic differences in import volumes clearly indicate that such imports are not competing with each other.

n. The applicant is itself responsible for the injury caused due to the price suppression and depression because of the low-priced imports made by it. The domestic industry cannot petition for imposition of ADD after its interests have been served and the user industry starts importing from the same source.

o. The Authority did not conduct monthly price undercutting analysis in the sunset review investigation concerning imports from China. Further, parameters cannot be cherry picked to be assessed on monthly basis.

p. There is no correlation between the profitability of the applicant and the price undercutting. Since price undercutting was negative, the applicant could have increased its prices. Therefore, price suppression/depression cannot be attributed to imports.

q. The Authority's observation in regards to the factors affecting domestic prices is not in consonance with the facts which show that price undercutting is negative. Furthermore, the inclusion of Qatar shows a lower overall margin of negative price undercutting which would increase otherwise.

r. The applicant has already started to reap the benefits of such capacity addition through significantly increased sales and production. Therefore, the examination of Authority that applicant is unable to align prices with costs due to allegedly low-priced imports is incorrect.

s. The losses suffered by the domestic industry has been on account of depreciation suffered by the domestic industry in setting-up the new plant which has increased the cost of sales.

t. The Authority has noted that injury suffered is not due to capacity expansion as the applicant has also suffered cash losses, and therefore it should disregard additional investment incurred towards urea capacity of 50,000MT in the integrated plant.

u. The Authority is requested to examine profits from export business. If exports are profitable and applicant is able to find adequate export market to survive, it should be examined while determining whether imports from the subject country are capable of causing injury to the applicant.

v. During the oral hearing, the petitioner had submitted that the treatment of Ammonia while constructing the NIP of the domestic industry was performed in accordance with the final findings dated February 19, 2018 in the previous sunset review investigation against imports from Iran, Indonesia, Japan and EU. The Respondent requests the Authority to verify the same.

w. The non-recurring start-up costs incurred as a result of setting up and commissioning the new 40,000MT Plant-III of the Petitioner must be excluded while calculating the NIP.

x. All three constituent units of NIP – inputs, overheads including all and reasonable return have been overstated and manipulated as to successfully fudge the results.

y. It would not be irrational on part of the Authority to adopt a weighted average cost of natural gases including imported LNG equalized to natural gases as recorded in the books of accounts to arrive at the cost of natural gas in making of melamine via urea or ammonia or both as the case may be because the measure of natural gas is going to remain more or less same. This would also be in accordance with generally accepted accounting principles.

z. The applicant has several sources for LNG such as ONGC (which is the cheapest), Gujarat Gases and Reliance and each source contributes differently at different prices to total gases sourced at a price range varying between 1:4 by any rough estimate. Such purchase decisions are compulsions of availability vis-à-vis demand for the plant as a whole. lt cannot be said at any stage of sourcing or conversion to Ammonia or Urea that any particular gas was used to produce Ammonia/Urea going to Melamine. Moreover, the subsidy on urea provided by Government of India is being computed on the basis of the differences between normal value including a reasonable profit and the actual sales prices.

aa. The Cost Accountant's certificate with respect to the apportionment of gases is not appropriate and beyond the competence of the cost accountant.

bb. The Authority should ascertain weighted average cost of natural gases independently through GSTN data which contains the entire data of transactions of both sales and purchases.

cc. The increased cost of Ammonia during 2020-21 is USD 269/ton in comparison to USD 262/ton. If we proceed from here, the cost of the required amount of ammonia to produce 1 MT on melamine would come to Rs. 34531 only which is higher than the

weighted average cost of all gases and ammonia. The cost computed on the basis of published records of GSFC is about Rs. 32361.58/ton of melamine. The DGTR can take any of these costs.

dd. Regarding the quantification of all other expenses, it is submitted that these cannot be logically apportioned. GSFC cannot say that its Directors or Managers worked only for a particular product except few staff of sales team which is product specific. It is merely a declaration of grouping of expenses head on expediencies that achieve the objectivity. It would not be inappropriate to treat all costs including finance cost, depreciation etc. or all costs as a whole to apportion in proportion to value or volume of natural gases or turnover used for the two manifest segments namely fertilizers and industrial products as one of the several criteria in the absence of any law and rules thereunder in place.

ee. If the Authority does the apportionment on entire expenses on value basis, then the load on industrial unit would be significantly higher and would be more efficacious in estimation of NIP as during FY 2020-2021, the fertilizers commodity share is 77% and industrial products share is 23 %.

ff. On the basis of different costs of Ammonia from different sources for guidance to determine the NIP the following table can be referred to:

Source	Cost of Ammonia/ton	Cost of Melamine 1.522/t Melamine
On the basis of gas price in published results of GSFC	Rs. 32361.58	Rs.49254.32
On the basis of Imported NH3	Rs.22688.00	Rs.34531.14
On the basis of DGTR finding in case AD-5SR 16/2020	Rs. 30826,00	Rs. 46917.17
Overheads on the basis of turnover @ 239a on sale price of Rs.75000/ton		Rs.17250
Overheads on the basis of raw-materials @ 38% on the highest input cost of Rs.32361.58		Rs.12297.40

gg. Even where the Authority opts for higher of the above two different costs of ammonia GSFC constructed ammonia cost determination of Rs.32361.58/ton the higher of the two overheads demonstrated in preceding paragraph i.e. Rs. 12297/ton or Rs. 17250/ton including cost of finance and income taxes totaling to Rs.49611.58/ton excluding reasonable profit, the estimates on NIP at about Rs.96000/MT by DGTR is absurd and hostile. An objective investigating authority should not allow such collusive behavior to affect the results of the investigation. These calculations are based on GSFC's last published annual results for the FY 2020-21.

hh. The Authority has noted that it has considered return for NIP as per its consistent practice. However, mechanical formula of 22% return on capital employed must not be applied It is not clear whether commercial value of the off-gases such as CO_2 and NH_3 released during the manufacturing process has been considered or not.

ii. Best utilisation of raw material will only be relevant in assessing or dealing with retardation of an industry but it cannot be as basis for determining the injury that has already happened.

jj. In the new plant of the applicant, there is no separate cost of energy. The same can be verified from the statutory report in Form A read with Annexure D to the Directors report filed by the applicant.

kk. Overseas funds can be borrowed at 2.5% on LIBOR and from India at 7% to 10%. The internal guideline on return at 22% on ROCE is irrelevant in present circumstances.

ll. While determining CNV, DGTR applies 5% as reasonable profits after including actual finance cost. There is no reason why the Indian domestic industry should be given 22% ROCE.

mm. Furthermore, the treatment of Ammonia in calculation of normal value remains unclear. However, if the current approach is same as the approach adopted in the calculation of NIP in the previous sunset review investigation on imports of the PUC from Iran, Indonesia, EU and Japan, then it would result into an inflated normal value.

nn. The Authority has made certain adjustments to the cost of production of QMC the details of which have not been disclosed to the exporter.

oo. The dumping margin of cooperating exporters from Qatar is the highest amongst the subject countries, even though no exporter from such countries have cooperated. Cooperating exporters should be given benefit, but they are rather being penalised for their cooperation.

pp. Cost structure of the applicant and that of producers and exporters from the other subject countries is not comparable. The Authority should have considered responding producer's data for the purpose of determination of normal value for other countries.

qq. The practices of DGTR are patently illegal as a matter of its mindset and is being grossly abused to promote vested interests in the guise of fair trade. It violates the constitutional guarantee of fair share in development.

rr. Imports from China PR that are priced lower than domestic industry prices and other import prices. Subject countries should not be made to suffer due to domestic industry's price war with China PR.

ss. The Authority can recommend a benchmark form of duty or alternatively, the duty could be linked to the maximum capacity of the applicant and any import in a year beyond such capacity should be allowed without imposition of ADD.

tt. Ministry of Finance has rejected imposition of duty on the PUC from China presumably on grounds of public interest. Imposition of duties only on the subject countries would be against public interest and interest of the domestic industry.

uu. As per Article 9.2 of the Anti-dumping Agreement, duties must be collected on non-discretionary basis on imports of products from all sources found to have been dumping and causing injury.

vv. Demand is approximately 60,000 MT per annum whereas production capacity is limited to 15,000 MT per annum.

ww. Initiation of the investigation was bad and not maintainable at all. Data and methodology employed is unfaithful with an intent to make non- injurious import as injurious by overstating the NIP.

xx. Data of the period of investigation of April 2019 to September 2020 is mixed with the data of pandemic period of November 2019 to September 2020 and has now become irrelevant, unrealistic and incomparable. A fresh investigation should be reinitiated from October 2020 as period of investigation.

yy. There is acknowledgement by GSFC in annual report of FY 2020-21 of devastating destructive impact of Covid on the economy of the country, particularly MSME who are collectively the backbone of the consumer industry.

zz. Injury to the domestic industry due to factors other than dumping should not be clubbed with lumped with dumping.

aaa. The core dispute is how much inputs of Natural Gas/Ammonia are required for the production of 1 MT of Melamine.

bbb. GSFC has proven history of manipulating cost as was done in the sunset review of same product in past.

ccc. 'Best utilisation' is an ideal proposition of what out to have been incurred or earned and is hypothetical. "Best utilisation" may only be relevant in determining the injury while assessing or dealing with retardation of an industry.

ddd. Sum realized in excess of NIP should be recovered from GSFC as the state protection is only to the extent of injury and any excess over the NIP amounts to unjust enrichment.

eee. In synthesis of input gases in the form of natural gas and/or solid intermediary input Ammonia have definite weight or molecule which are universal. There are scientific evidence that requires no validation by the Authority because it cannot be altered.

fff. Weighted average per unit cost of natural gases and Ammonia as recorded in books of accounts should be used for calculation irrespective of any hypothetical end use conditionality.

ggg. As can be seen from the annual report of the applicant, cost of utilities is zero as they input utilities are propelling more than required energy.

hhh. GATT does not consider situations such as Covid -19 for determination of normal value. Period has been affected by pandemic and hence normal value will not be in ordinary course of trade. Normal value does not encompass in its ambit prevalence of market conditions that is not normal or in the ordinary course of trade such as long-lasting pandemic resulting in force majeure condition since November 2019.

iii. A technical team should visit the plant to examine the input output norms.

jjj. The Authority has a long-standing practice of lumping of all three constituents and applies a standard formula of 22% ROCE in every single investigation regardless of the product, nature and size of the industry.

K. 2. Submissions by the domestic industry.

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

a. The language used in the comments to disclosure statement by Cent Ply is unnecessary, inappropriate, baseless and unsubstantiated. Cent Ply accused the DI to manipulate information with the Authority to justify its case.

b. Copy of the submissions filed post oral hearing by Cent Ply has not been served to the applicant.

c. The submission that the Authority should examine the current prices demeans the very purpose of period of investigation. There is no requirement of having recent period of investigation at the time of final finding, but the only requirement is period of investigation should be recent enough at initiation.

d. No requirement to examine the post period of investigation data in fresh investigation.

e. Increase in prices of the applicant is a temporary phenomenon caused due to disruption in global supply chain and increase in input cost.

f. Price of Melamine have increased globally.

g. The appglicant fixes its price as per import price. The landed price of imports is expected to decline once the disruption settles.

h. The applicant is unable to understand how Cent Ply has computed Rs. 21/KG as injury. Increase in price is temporary caused due to covid disruption having global impact.

i. The Authority should not selectively call post POI data or calculate weighted average of natural gas and there is no need to do so from GSTN portal since DI is cooperating and shall provide relevant info.

j. Submission of Cent Ply regarding price suppression lacks appreciation that st

k. Cent Ply should have asked exporters to justify why they increased/reduced prices disregarding the input costs as is done by DI. Cent Ply treating exports' behaviour appropriate and blames the DI.

l. Plant I and II are not operational during 2020-21 but that is because Plant III is new, bigger and with new technology offering better economies of scale while being cost effective.

m. The applicant operated at more than 100% capacity utilization in certain months on its new plant of 40,000 MT and could have produced more. There was no merit in producing some minor quantities in the old plants.

n. Submission of Cent Ply regarding cost of overheads and calculation of non-injurious price are baseless and outrageous. If the same is applied to Cent Ply, their profits would become 200-300.

o. The applicant is surprised how the respondent is aware about the non-injurious price determined by the Authority. The NIP determined by the Authority and the NIP mentioned by the respondent are almost same. NIP being confidential in nature, the applicant is concerned about the reach of the respondent to the confidential figure of NIP.

p. Return allowed for Plant I and Plant II at the rate of 22% is too low. Cent Ply expected the DGTR to consider 22% return when protecting fiberboard industry through anti-subsidy investigations.

q. Submission of Cent Ply regarding determining CNV should be ignored as it lacks knowledge about the law and practice.

r. No legal obligation requiring examination of data of other products in the industrial segment. Cost of data was verified by senior accounting expert officials.

s. On the submission of Sandeep Organics difference between 99.5% & 99.8%, it must establish that there are differences in grades and the domestic industry has not offered like article.

t. Sandeep Organics must show the difference in high- or low-pressure melamine rather than making unsubstantiated claims at this stage. There is no difference between high- or low-pressure melamine in India.

u. None of the exporters claimed to have product available in different sizes. None of the past investigations had separate normal value, export price and dumping margin.

v. The applicant has not exported the product because it is focused on domestic market and not because its price is cheaper than Japan, EU, Qatar and UAE.

w. Since the normal value is based on the data of the applicant, it is requested that the same be disclosed to the applicant.

x. Methodology of determining normal value based on optimized cost of production is not appropriate.

y. The applicant requests the disclosure of export price for non-responding countries and resultant dumping margin.

z. The domestic industry has not been disclosed complete working of non-injurious price including format B, D, expenses allowed/disallowed, net fixed assets considered, and capital employed details and domestic industry is unable to comprehend the workings without linked filed.

aa. Non-injurious price of the applicant is understated and suppressed.

bb. Cost of raw material in Plant I and II has been reduced for determining non-injurious price despite consumption being lowest in the period of investigation.

cc. Cost under repair and maintenance and other manufacturing expenses not considered as per Format C of Plant I and II.

dd. Expenses under repair and maintenance, other manufacturing expenses and finance cost not considered in Format C for Plant III.

ee. No opportunity provided to the applicant to defend its interest when excess reduction of income from by-product.

ff. Net fixed asset and working capital allowed have undergone a change and are grossly lower than figures reported by the domestic industry.

gg. Users have not shown evidence of adverse impact of duties. Impact of duties gets passed on to the end consumer and users do not bear any impact. Reliance is placed on financial statements of the users showing increased turnover and profits.

hh. The applicant has quantified the impact on end product which is as below:

SN	Particulars	Rate of final product	Impact on end product
1	Fluorescent Pigments	Rs./Kg 450	0.55%
2	Commercial Plywood	Rs./Sqm 377	0.22%
3	MDF Board	Rs./Sqm 646	0.29%
4	Melamine Faced Board	Rs./Sqm 452	0.82%

ii. Current covid situation has shown the importance of the domestic industry, CIF price into India more than tripled whereas cost of urea increased only twice.

jj. The domestic industry operates with significant idle capacity and there is no need for users to import such significant high quantities.

kk. No duty has been imposed on imports from China which is also available duty free to the users.

ll. Cost of melamine is less than 1% of the total cost to the downstream industry.

mm. The domestic industry has invested around Rs. 800 crores for 40,000 MT capacity plant of Melamine. Failed to achieve its targets due to imports.

nn. Benchmark duty will not serve purpose in present investigation. Appropriate form of duty is fixed quantum.

oo. Publicly known information that applicant has commenced production on its new plant of 40,000 MT in 2019-20 and total capacity of applicant now is 55,000 MT. Issue on demand and supply gap has been well settled by the CESTAT in the matter of DSM Idemitsu Limited vs Designated Authority

pp. Authority recommended and Central Govt. imposed antidumping duty on melamine from China PR with much larger demand-supply gap.

qq. Applicant had stopped production due to pandemic only in the month of April 2020. Barring this period, GSFC had produced in the entire period of investigation. There is no impact of high costs due to low production because of pandemic.

rr. GSFC has sold in all the months over the period of investigation and imports too have happened in the entire period of investigation. Moreover, the average monthly sales of GSFC have been in the same range in the period 2019-20 and April 2020 to September 2021.

ss. Merely because there might have been improvement in performance after the period of investigation, it does not imply that duty should not be imposed. Similar issues had come up in past investigations as well, such as Phthalic Anhydride from China PR, Indonesia, Korea RP and Thailand wherein too DGTR did not consider the performance in the post period of investigation in recommendation of duties. Moreover, even the Ministry of Finance also did not consider the same while imposing duties.

tt. There is no requirement in the law that the POI should be recent at the time of final findings. The requirement relating to POI is that it should be recent enough at the time of initiation of investigation. Indeed, at the time of initiation of investigation, the POI was not older than 6 months.

uu. Rules provides for completion of investigations in 12 months. The same can be extended by 6 months. There would be a gap of 4-6 months between end of the period of investigation and initiation of investigations. This means, the law itself envisages that the end of the POI shall be as old as 16-24 months.

vv. Authority's obligation is to examine "known other factors". As regards factors other than known other factors are concerned, the jurisprudence is absolutely clear – the party must identify a factor, establish its existence, quantify its impact. Only thereafter, the Designated Authority is obliged to take the same into account.

ww. Legal position with regard to "a" causal link is also well established both by the law and the practice. Dumping need not be the sole cause of injury. Dumping need not even be the principal cause of injury. Dumping should be only one of the causes of injury.

xx. If sum realised by GSFC is below NIP, neither Govt. nor importer reimburse GSFC the difference amount even after establishing that dumping caused injury. Considering the cumulative ROCE for the injury period (which is negative by 3.53%), GSFC earnings were lower by Rs. 398 crores. This loss of revenue will not be reimbursed to GSFC by the consumers or the Govt.

yy. The statements made by the applicant in the annual report are being misquoted. The applicant had only quoted that the Covid 19 lockdown had an impact on all the industries including MSME industries. Mere statement does not imply that the applicant can be denied level playing field against dumped imports.

zz. Statements in the annual report are NOT with regard to deterioration in performance of the domestic industry over the injury period. Designated Authority is concerned with performance of the domestic industry over the injury period.

aaa. Designated Authority's decision is not based on POI alone. Designated Authority's decision is based on performance over injury period. The Annual Reports are however focused only on the period under consideration.

bbb. Designated Authority is not concerned about reasons for dumping. Annual reports go into the reasons for dumping. The shareholders and other stakeholders are interested in knowing not only the performance during the year but also reasons for the performance.

ccc. Cent Ply has repeatedly resorted to levelling allegations – whether it is melamine or phenol, whether it is relating to DGTR, or other Govt. authorities (such as BIS).

ddd. Applicant domestic industry has already given the credit of Ammonia gas in the calculation of cost of production.

eee. Cent Ply has made reference to the annual reports of the applicant which may be relied upon. The table from the annual report is shown below. Separate consumption of utility has been provided for the old and new plant.

fff. Natural gas at low prices are provided to applicant on condition that same will be used only in production of products meant for fertilizers. The natural gas given to the company at subsidized rates cannot be used for the production of Melamine. Any such use is illegal.

ggg. Adequacy of 22% return on capital employed has been examined by CESTAT and it was held that nobody will invest money for manufacture if one does not get reasonable profit on capital investment. No evidence was produced that margin of profit is unreasonable. Therefore, profit taken is reasonable.

hhh. M/s Cent Ply has not established why the Authority should look at some technical body. Designated Authority cannot derail its established practice and adopt a de-novo approach in the present case.

iii. It is not established why Authority should call information from GSTN when the Authority has information available from books of accounts and the same has been adopted in the present case

jjj. On submission of GATT not considering Covid – 19 for determination of normal value, rules provide for considering whether domestic sales were in the ordinary course of trade, whether the comparison between the normal value & export price is inappropriate. No exporter claimed this.

kkk. On submission of increase in price of Melamine more than price of Natural Gas, Authority cannot make determination based on a moving target of period. There has been an increase in the global prices of Melamine and is not restricted to only the Indian market. In fact, as per the information provided by Cent Ply in its letter, the prices have again started to decline

lll. On submission of investments made by consumers, consumers in India are required to make investments considering access to inputs at fair and undumped prices. Viability of consumers cannot be dependent on access to raw material at unfair and

dumped prices. Domestic industry requests non-discriminatory treatment to the domestic industry in protecting against such unfair practice of dumping by the foreign producers.

mmm. Majority of expenses are on account of raw materials and utilities, which are directly identified with the product under consideration. Significant expenses are already linked to industrial segment and therefore are unimpacted by difference in price between industrial and fertiliser.

K. 3. Examination by the Authority

127. It is noted that under Rule 16 of the AD Rules, 1995 the Authority disclosed all essential facts under consideration as per the submissions made by the interested parties and the domestic industry vide disclosure statement dated 2nd February 2022. Post disclosure comments were invited from the interested parties for which last date was 9th February 2022. The sole purpose of issuing disclosure is to throw light on the essential facts under consideration which would form the basis of the final findings and to invite comments of all the interested parties so that if required requisite amendments/examination to reach a fair decision can be done. In the instant case, while the Authority's examination was underway on the submissions made by the interested parties on the disclosure statement, one of the interested parties approached the Hon'ble Gauhati High Court simultaneously vide a writ petition[14] dated 17th February 2022 under Articles 226 and 227 of the Constitution of India. The Hon'ble High Court granted an interim stay on the investigation till the next date of hearing that was fixed on 24th February 2022. It is pertinent to note here that the case was initiated on 26th February 2021 and being a time bound investigation that has to be normally completed by 25th February 2022 (i.e. 12 moths from the date of the initiation). The Hon'ble High Court after considering the arguments of the petitioner as well as arguments advanced on behalf of the Authority disposed off the writ petition with a direction to the Authority to examine the issues advanced by the petitioner in its writ petition also. The Hon'ble Court also vide its judgement dated 24th February 2022 gave time to the writ petitioner to submit its submission before the Authority if any till 25th February 2022. It is further noted that though the importer/trader who is a writ petitioner has filed submissions till 25th February, 2022 (i.e. till the last date of final findings) but has not submitted the importer's questionnaire response. Despite this fact, the Authority has considered all the submissions of the importer/trader/writ petitioner.

128. In line with the direction of the Hon'ble High Court, the Authority waited for the comments of the writ petitioner till the official working hours and the same was informed to the petitioner vide email dated 25th of February, 2022 so that the issues raised afresh

[14] W.P.(C)/1102/2022.

by the writ petitioner can be examined and the findings can be issued in time so that the whole investigation process doesn't get infructuous which was also observed by the Court in its order dated 24th February 2022 at para 14[15]. However, since no comments were received from the writ petitioner till 5:30 p.m, the Authority proceeded with the submissions made by the interested parties post issuance of disclosure statement and the issues raised by the writ petitioner in the writ petition.

129. It is further noted that despite the fact that the writ petitioners were aware that the last date to issue final findings is 25th of February, 2022 and the fact that Authority has reminded the same through an e-mail dated 25th of February, 2022 after waiting for half a day in line with the Hon'ble Court's order, the writ petitioner were reluctant enough to file their submissions at such a belated stage (i.e. 8:39 P.M. on 25th of February, 2022) so as to inhibit the process initiated under the law. However, despite this fact, the Authority considered the response/submissions filed by the writ petitioner today at 8:39 P.M. and found that most of the issues are repetitive in nature and have been addressed by the Authority to the extent relevant to be more compliant with the order of the Hon'ble High Court dated 24th of February, 2022.

130. Regarding the submissions made by the interested parties on calculation on the basis of different grades, the Authority notes that on the basis of the data provided by the applicant, it is seen that all the three grades are in the same range. If the users feel that there is a difference, they could have brought forward the relevant information to the Authority. However, rather than providing the relevant information to the Authority, the users have only made reference to the final finding issued by the Authority in past cases and have not demonstrated the difference between the different grades. The conclusion drawn in the present investigation is based on the information available with the Authority. Similarly, no substantive evidence has been provided to highlight the difference between high-pressure and low-pressure melamine or difference in sizes.

131. Regarding the submissions made with respect to the improvement recorded in volume parameters with the new capacity, the Authority notes that undoubtedly the volume parameters such as production, sales and market share of the applicant have increased in the POI. However, the applicant is still operating with significant idle capacities due to dumped imports. While both the production and sales of the applicant have increased, the increase in sales is much lower as compared to increase in production and the applicant has been left with significant idle capacities and consequently a low market share. Further, increase in volume parameters do not have any bearing on the price parameters.

[15] "14. The further representation that may be submitted by the petitioners may preferably be done through the electronic means and be submitted on or before 25.02.2022."

132. On the issue of examination of the post period of investigation data, unlike sunset review investigation the examination of post period of investigation is not conducted in the original investigation. It is also seen from the information provided for global exports and imports data that the increase in prices in the post period of investigation has happened globally due to the disruption caused in freight due to COVID-19. Even the import price into India has also shown an increase. Therefore, the disruption is not solely restricted to the Indian market. The Authority also notes that temporary increase in prices due to some factor cannot be the sole reason for not recommending anti-dumping duty. Moreover, from the information provided by the interested party, it is also seen that the prices have again declined in the most recent period.

133. The Authority also notes that examination of dumping and injury is done for the period of investigation. Selective consideration of post period of investigation data would mean restoring the investigation to the stage of initiation. It will lead to collection of fresh data of the applicant and also the co-operating exporter. Further, it will require verification of the data/information provided, opportunity to the interested parties to offer comments, opportunity for hearing, post hearing written submissions and rejoinder submissions. By the time the Authority completes this, period of investigation would again become stale and the data provided would again not reflect market fluctuations. Moreover, considering post period of investigation data for the purpose of recommendation of duty would also disregard the relevance of period of investigation. Therefore, the Authority has decided not to consider information for post period of investigation.

134. Regarding the submissions made by interested parties that the POI in instant investigation is no longer representative of the current market forces, the Authority notes that there is nothing either in the AD Rules, 1995 or the WTO Agreement on Anti-dumping which mandates national investigation authorities to look beyond the period of investigation. It has been submitted that more than a year has passed from the terminating point of the POI and that latest data should be used for the purposes of investigation. The Authority notes that such a factual scenario exists in almost every investigation as that the AD Rules, 1995 as well as WTO Anti-dumping do not support such a proposition. The Authority further takes note of a Resolution[16] adopted by Committee on Anti-dumping Practices in this regard wherein the following was adopted:

"The Committee notes that although the Agreement on Implementation of Article VI of GATT
1994 refers to the period of data collection for dumping investigations when it refers to the "period of investigation", it does not establish any specific period of investigation, nor

[16] WTO, Committee on Anti-dumping Practices Recommendation Concerning the Periods of Data Collection for Anti-Dumping Investigations (Adopted on 5 May 2000) G/ADP/6 16 May 2000

does it establish guidelines for determining an appropriate period of investigation, for the examination of either dumping or injury.

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1. As a general rule:

(a) the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable. ”

This has also been the Authority’s consistent practice in this regard. Merely because consideration of post-POI data is not expressly prohibited does not mean that one can ignore the express and consistent practice and recommendations of international bodies in this regard.

135. Regarding the impact of COVID-19 on the applicant, the Authority notes that domestic industry had stopped production due to pandemic only in the month of April 2020. Barring this very brief period of one month out of eighteen months’ POI, domestic industry had produced in the entire period of investigation. Therefore, there is no impact of high costs due to low production because of pandemic. Further domestic industry has sold in all the months over the period of investigation and imports too have happened in the entire period of investigation. Moreover, the average monthly production and sales of GSFC have been in the same range in the period 2019-20 and April 2020 to September 2021.

(figures in MT)

Month	**Import from Subject Countries**	**Import from Country attracting ADD**	**Total Imports**	**GSFC Sales**	**GSFC Production**
Apr-19	2,910	1,697	4,652	***	***
May-19	4,937	1,042	6,439	***	***
Jun-19	3,932	2,003	6,192	***	***
Jul-19	4,056	1,327	5,505	***	***
Aug-19	3,997	976	5,289	***	***
Sep-19	3,901	1,199	5,383	***	***
Oct-19	3,500	844	4,361	***	***
Nov-19	5,061	807	6,229	***	***
Dec-19	3,745	703	4,828	***	***

Jan-20	3,533	1,267	4,800	***	***
Feb-20	3,404	1,977	5,597	***	***
Mar-20	3,081	1,095	4,196	***	***
Apr-20	3,074	1,278	4,644	***	***
May-20	1,802	855	3,249	***	***
Jun-20	1,048	84	1,292	***	***
Jul-20	950	856	2,066	***	***
Aug-20	1,990	559	2,929	***	***
Sep-20	3,730	735	4,745	***	***
Average during 12 months of 2019-20 (Pre-Covid period)	3,838	1,245	5,289	***	***
Average during 6 months from Apr-2020 to Sep-2020 (Post-Covid period)	2,099	728	3,154	***	***

136. In any case, the Authority has already neutralised the NIP impact of fixed costs due to such aberrated/skewed production of one month by considering the 100% capacity utilization as the optimum production as per the principles notified in Annexure-III to the AD Rules. It is further noted that the Authority usually adopts a period of 12 months as POI in its investigations. However, in the present case, the Authority has adopted a longer period of 18 months as POI to nullify the impact of COVID period, if any. It is also noted that the variable cost per unit does not have any major impact due to the adoption of such a longer POI of 18 months.

137. With regard to the incorrect cost of Ammonia, it is noted that the importer has provided the calculation of such cost of Ammonia to be Rs. 34,531 per MT on the basis of general import prices of Ammonia. It is however, noted that the NIP is determined on the basis of actual Ammonia used by the domestic industry which has utilized the captively manufactured Ammonia. Further, the Authority has considered the optimized cost of such captive input as per Annexure-III, thereby allowing the cost of Ammonia as Rs. *** per MT which is a much lower cost as compared to the cost determined by the importer.

138. With regard to the incorrect apportionment /allocation of other expenses on value basis, it is noted that the expenses like salary & wages, depreciation, finance cost, etc. dedicated to the PUC have been considered as such and the basis of allocation claimed by the domestic industry for other common fixed overhead costs has been disallowed by the

Authority as the domestic industry is a multi-product company having non-homogeneous products. Instead, the Authority has materially reduced these common fixed overhead costs based on the reasonable costing methodology as per the generally accepted cost accounting principles. Further, such allocated expenses have been allowed after optimization with 100% capacity utilization to nullify the internal injury, if any, on this account.

139. With regard to the calculation of NIP as given by the importer and consideration of different costs of Ammonia as provided in annual results for NIP determination, it is noted that the cost of inputs like raw materials and utilities and the overhead costs have been considered as per the Annexure-III to the AD Rules, as per the consistent practice of DGTR in this regard and based on the actuals as recorded in the books of accounts of GSFC. Due to the confidentiality, such determinations cannot be disclosed to the other interested parties. Such determination of NIP in the present case has resulted in material reduction of NIP claimed by the domestic industry.

140. Regarding the request of using the principle of best utilization only in case of retardation, it is noted that such a provision is a mandatory requirement for the injury cases as well as per AD Rules which does not result in the increase of NIP, but the other way round.

141. Regarding the issue of no separate cost of energy for the manufacturing of Melamine, it is noted that the domestic industry keeps separate records for the raw materials and various utilities used in the manufacturing of the PUC. The evidence of consumption norms provided by the importer based on the Casale Report does not provide such bifurcated norms of each and every element of raw material and utility, required for the purpose of application of Annexure-III in this regard. It is further noted that the importer has completely mis-understood the fact in this regard, as the Form A read with Annexure D to the Directors report filed by GSFC clearly shows that the old plants have operated only in 2019-20 while the new plant has operated only in 2020-21. Therefore, the cost of energy shown in such Form-A is nil in 2020-21 for the old plant and nil in 2019-20 for the new plant.

142. Regarding the request of application of responding producer's (from Qatar) data for the purpose of determination of normal value for other subject countries, it is noted such an approach may unduly increase the normal value for the producers from subject countries other than Qatar which may be unfair for the importer or user as well as for such foreign producers. The Authority has adopted its consistent approach in this regard.

143. Contention that demand is approximately 60,000 MT per annum whereas production capacity is limited to 15,000 MT per annum. Authority notes that production capacity is

45,000 MT per annum and not 15,000 MT per annum. The Authority further notes that Hon'ble CESTAT in the matter of DSM Idemitsu Limited v. Designated Authority and thereafter in a number of other cases held that demand-supply gap in country does not bar a domestic industry from seeking redressal from dumped imports and does not justify dumping. Foreign producers can always meet the Indian demand by selling the product at un-dumped prices. Even after the imposition of antidumping duty, the imports are not restricted in the country. The users are free to import the goods at fair price.

144. Contention that initiation of the investigation was bad and not maintainable on account of data and methodology employed for making non- injurious import as injurious by overstating the NIP. the Authority notes that present investigation was initiated based on sufficient prima facie evidence submitted by the applicant in the application. During the Course of investigation the Authority has verified the information and determined NIP based on such verified data.

145. With regard to the submission of universal weight/ molecule or incorrect input-output norms, it is noted that the Authority has determined the input-output norms after an onsite verification by four officers of DGTR and determined the input-output norms as reflected in the records and as per the consistent application of Annexure-III and/or DGTR practice for the PUC in the past 20 years in this regard.

146. On the submission made by the interested parties that the Authority has not considered other factors such as poor demand and upward price movement of raw materials, the Authority notes that increase in upward price movement of raw materials and poor demand are common factors for the applicant as well as the exporters. Under the Rules, the Authority is required to consider the domestic industry as it exists and examine whether the performance of the domestic industry has deteriorated over the injury period. It is noted that the cost of raw materials has been taken after due verification of the books of accounts maintained by the applicant company. Further, even if it is considered that poor demand was a cause of injury, the imports from the subject countries have increased. Therefore, the Authority notes that there is no other factor brought forward which could have attributed to the injury to the domestic industry.

147. On the comments made with regard to imports in previous year also contributing to the injury suffered by the applicant, the Authority notes that as a practice, it considers imports made in the period of investigation to examine if the applicant has itself engaged in dumping which has caused injury to it. In the present case, the applicant has not imported in the period of investigation and has claimed injury suffered due to dumped imports in the period of investigation. Even though the applicant stopped facilitating the imports of

subject goods from subject countries in the POI, the imports have continued to increase. Therefore, imports made by the applicant in the previous years are not a cause of injury.

148. Article 6.9 of the Anti-Dumping Agreement provides that the national investigating authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Similarly, Rule 16 of the AD Rules, 1995 also require the Authority to disclose essential facts under consideration which form the basis for its decision. The fact that the applicant has facilitated imports has been disclosed to the interested parties in the disclosure statement and sufficient opportunity has been provided to the interested parties to offer their comments.

149. On the submission made with regard to exclusion of depreciation of integrated urea plant from the calculation of depreciation of melamine, the Authority notes that depreciation charged on integrated urea plant has not been considered. Therefore, the calculation of cash losses of the applicant is solely restricted to melamine plant only.

150. The Authority has examined the trend of import prices from the subject countries for the period of investigation. It is seen that while imports from Qatar were lowest in some months, it was imports from other subject countries which were lowest in the other months. This fluctuating trend further highlights that the imports from the subject countries compete with each other. The Authority notes that mere decline in imports from one of the subject countries is insufficient to not consider cumulative assessment of imports. What is relevant is whether the imports from subject countries compete inter se. Moving share of imports from different countries is in fact evidence of inter-se competition among the imports.

151. On the submission made regarding monthly analysis of price undercutting is not appropriate, the Authority notes that such an analysis is adopted only when there is an extreme volatility in the movement of price. In the present case, the applicant has raised the contention that there was a significant fluctuation in the prices of the subject goods. The Authority has after examining the trend of prices, considered that it was appropriate to conduct monthly analysis of price undercutting.

152. Regarding the submission that imports from China PR are dragging down the prices of the applicant as well as subject countries, the Authority notes that during the POI, the Chinese subject goods were attracting anti-dumping duty and landed price of imports from China including anti-dumping duty was higher than the landed price of imports from subject countries. Therefore, this contention cannot be accepted.

153. On the submission made with regard to methodology adopted for calculation of normal value, the Authority notes that normal value has been calculated as per the Annexure I and the consistent practice of the Authority in this regard.

154. It has been contended that the applicant could have used the imported urea for the production of melamine which is cheaper. The Authority notes that if the cause of injury was due to high cost of urea, the applicant would have suffered injury in the earlier years as well. However, the applicant domestic industry has been in profits in the past. Therefore, there is no merit in the argument that the applicant should have used the imported urea for the production of melamine which is cheaper.

155. On the submission made with regard to inclusion of export profits in injury analysis, the Authority notes that even exports are in losses but the loss per unit suffered by the applicant in the export market are very minimal. It is however seen that exports undertaken by the applicant are very negligible in quantity to give any identification. Injury analysis is required to be conducted for domestic operations only and not for export operations. The Authority has as per the consistent practice considered domestic profitability only.

156. With regard to the comments made by the applicant domestic industry and the other interested parties on the computation of the non-injurious price and the disclosure thereof, the Authority notes that non-injurious price has been determined in accordance with Annexure-III of the AD Rules, 1995 and the consistent practice of the Authority.

157. On the submissions of the domestic industry and the other interested parties regarding rate of return on capital employed, the Authority notes that the issue was already addressed in the disclosure statement issued. The Authority further notes that while the other interested parties have argued that a return of 22% is very high, the applicant has submitted that 22% return is significantly low for a plant which is old and depreciated. The Authority has been as per its practice considered a return of 22% on capital employed as adequate return. The Authority further notes that 22% return has been upheld as adequate return by Hon'ble CESTAT in several decisions[17].

158. On the submission made by the interested parties on no correlation between the applicant's profitability and price undercutting, the Authority notes that both price undercutting and the profitability are based on different functions. While price undercutting is a function of selling price and landed price, the profitability is a function of cost of sales and selling price. Therefore, there may not exist a direct correlation between the two.

[17] Merino Panel Products Ltd. v. Designated Authority 2016 SCC OnLine CESTAT 2236.

159. With regard to the comments made by the applicant and the other interested parties on the computation of the non-injurious price and the disclosure thereof, the Authority notes that non-injurious price has been determined in accordance with Annexure III of the AD Rules, 1995 and the consistent practice of the Authority. As regards the submission that data provided in the DGTR formats should be disregarded and information from the annual reports should be considered, the information such as production, sales, cost of inputs and energy for the previous years has been examined from the annual reports of the applicant and the same has been considered after due verification. The information provided by the applicant in the DGTR format reconciles with the information provided in the financial statements.

160. On the submission made by interested parties for examination of other products in industrial segment, the Authority notes that the present investigation pertains to melamine. The applicant has provided the relevant information required which has been duly verified by the Authority. There is no reason why the Authority is required to examine the performance of other products in the industrial segment.

161. On the submission made with regard to calculation of cost of production of Qatar Melamine Company and disclosure therefore, the Authority notes that the same has been calculated as per the Annexure I and consistent practice of the Authority. The calculation has been done as per the information filed and verified during the verification stage and adequate disclosure has been made to the producer.

162. The Authority notes the submissions made by exporters from Qatar to consider the normal value of Qatar for other subject countries as well. The Authority in this regard holds that while the condition on various subject countries vary, at the same time, the non-cooperation from any country requires adverse factors to be applied. For the non-cooperating producers from such countries, the Authority has applied adverse facts and ADD is to be imposed in accordance with lesser duty rule. Both dumping margin and injury margin are dependent on export price of subject countries and therefore, it may not be appropriate to consider the request of exporters from Qatar as in this case, the factual matrix warrants application of adverse facts as per its consistent practice.

163. On the submission made by the interested parties with respect to the form of ADD, it is noted that an appropriate form of duty has been recommended considering the facts and history of the product under consideration. With significant fluctuations in the prices of the product and raw material, benchmark form of duty will not be appropriate. The Authority notes that anti-dumping duty is required to be imposed in a manner that serves the objective of preventing unfair practice of dumping. In the anti-dumping investigation

concerning imports of Melamine from China, the Authority had recommended benchmark form of duty. However, in the second sunset review, it was found that there was a wide variation in the import price under duty free imports and non-duty free imports. The Authority therefore found non- reliability of the import price of non-duty free imports when compared to the advance license prices and recommended a fixed form of duty. Therefore, when anti-dumping duty had not served the purpose in past, recommending the same will not serve the purpose in the current investigation.

164. As regards the submission made by the interested parties regarding the cross-checking of the NG purchase prices of the domestic industry, it is noted that the Authority had conducted an on-spot verification of the domestic industry and verified the accuracy of the data/information filed by the domestic industry. However, since submissions were raised to verify it from GSTN , the Authority for authenticity in this regard verified the same from the return/records (Cost Audit Reports) filed by the domestic industry with the Registrar of the Companies.

165. M/s Century Plywood has presented certain claims on the technology used, norms and the raw material used to manufacture melamine from people working in Casale and GSFC and that the aforesaid data would be made available for judicial scrutiny if required. The Authority in this regard notes that the NIP for the domestic industry wherein such data is used, is done extremely diligently based on verified economic and financial data and records. The NIP is finalized after a series of checks by experienced experts before it is finally accepted by the Authority. The Authority, undoubtedly, appreciates that there could be some inadvertent errors at time, which also get rectified when represented or contended in appropriate judicial fora. Since the NIP is computed under a rule bound template, accepting that the DGTR would get carried away by attempts of fraudulence by any of the interested parties including the domestic industry does not seem tenable.

166. The Authority notes the comments of M/s Century Plywood regarding an anti-dumping investigation being a two-way process with an obligation on the domestic industry to surrender any realization in excess of NIP. The Authority also notes that M/s Century Plywood has alleged that GSFC has been manipulating the data and has filed fudged/false data. The Authority in this regard observes that NIP is computed with an intention that the domestic industry does not get any protection beyond what would be non-injurious to them. This, therefore, is the guiding principle to limit the protection even below the dumping margin in cases where it is appropriate to do so. NIP is computed by experts in the DGTR in accordance with the AD Rules, 1995 after referring to the financial and cost records of the domestic industry. This system of NIP computation undergoes check at various levels. To ensure this, the Authority invites data from all concerned interested parties to validate any claims made by the domestic industry. Even the importers are requested to file their transaction-wise data to validate the data filed by exporters or what

is adopted by the Authority from the DGCIS or the DG Systems. With such built-in checks and balances it seems highly improbable that the DI can mislead/fudge data. Further, in the event of any challenge the records are placed before the appropriate appellate bodies and other judicial forums for scrutiny. Despite this, the Authority has during the COVID period put its efforts to validate and verify the data filed by any of the interested parties as well as the domestic industry. The Authority further notes that though M/s Cent Ply (claimed to be a major importer and consumer of the PUC) has participated in this investigation by submitting its legal submissions questioning the genuineness of the data filed by the domestic industry, yet it failed to provide its requisite data in the importer questionnaire response to the Authority within the stipulated time for verification of the Authority.

167. It has been contended that since duties were not imposed by the Central Government on the PUC from China PR in a previous investigation, and therefore, imposing a duty on the PUC in the present investigation would be a violation of Art. 9.2 of the Anti-dumping Agreement. In this regard, it is noted that the Authority's mandate is to recommend the imposition/non-imposition of duty based on its conclusions regarding dumping, injury and the causal link in accordance with the AD Rules, 1995 and Customs Tariff Act, 1975. A positive finding with respect to these factors obliges the Authority to recommend imposition of duty. The final decision with respect to imposition of duty lies with the Central Government.

168. The Authority was seized of a similar contention in its Final Findings in Glass Fibre[18]. It had taken note of the GATT Panel Report in *EC – Imposition of Anti-dumping Duties on Imports of Cotton Yarn from Brazil*[19] and had concluded the following:

> "128. From the above analysis it becomes clear that the obligation under Art. 9.2 arises only when the Central Government takes a decision to impose an anti-dumping duty under Art. 9.1 of the WTO Anti-dumping Agreement. Further, the non-discriminatory requirement as required under Art. 9.2 is only at the stage of collection of duties. The Authority also notes the discretion granted to member nations under Art. 9.1 regarding the "decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled". The Authority notes that in the SSR investigation the Central Government did not impose duties with respect to exporters from China PR. As no duties were imposed nor were any duties collected in terms of Art. 9.1 of the Agreement the

[18] Case No.ADD-OI-20/2020 Anti-dumping investigation concerning imports of "Glass Fibre and Article thereof" originating in or exported from Bahrain and Egypt dated 30th November 2021.
[19] GATT Panel, EC – Imposition of Anti-dumping Duties on Imports of Cotton Yarn from Brazil, 4 July 1995 (95-1814).

> question of violation of the non-discrimination obligation under Art. 9.2 of the Agreement does not arise. Furthermore, no straightjacket formula can be adopted for imposition of duties or non-imposition of duties. Each investigation has to be adjudged on its own merits and consequently the decision "whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled" has to be considered on a case-by-case basis."[20]

In light of this, the Authority does not consider any merits in the submission of the interested parties on this aspect.

M. CONCLUSION

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

a. The applicant is an eligible domestic industry within the meaning of Rule 2(b) of the AD Rules, 1995. The application satisfies the criteria of standing in terms of Rule 5(3) of the AD Rules, 1995.
b. The product produced by the domestic industry is like article to the product under consideration imported from the subject countries.
c. The application contained all information relevant for the purpose of initiation of the investigation and also contained evidence to justify initiation of the present investigation.
d. Considering the normal value and export price for the subject goods, dumping margin for the subject goods from the subject countries has been determined, and the margin is positive and significant.
e. The domestic industry has suffered material injury in view of the following
    a. Volume of dumped imports from subject countries have increased in both absolute and relative terms
    b. Imports from subject countries are undercutting the prices of the applicant domestic industry.
    c. While production has increased, the applicant domestic industry is operating with significant idle capacity. Further, increase in domestic sales has not been in line with increase in production as the applicant has been left with significant idle inventories.
    d. The performance of the domestic industry has significantly deteriorated in respect of profits, cash profits and return on capital employed. The domestic

[20] *Supra* note 8.

industry has suffered financial losses, cash losses and negative return on investments in the period of investigation.

f. There are no other factors which could have caused injury to the applicant domestic industry.

g. The material injury suffered has been caused by dumped imports

h. Imposition of anti-dumping duty will not have any significant adverse public interest.

N. RECOMMENDATION

170. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, Embassy of the subject countries, exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and causal link in terms of Rules and having established positive dumping margin as well material injury to the domestic industry caused by such imports, the Authority is of the view that imposition of antidumping duty is necessary.

171. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, from the date of notification to be issued in this regard by the Central Government, so .as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the amount indicated in Col No.7 of the table below is recommended to be imposed on all imports of the subject goods originating in or exported from the subject countries.

Duty Table

SN	Heading/ Subheading	Description of goods	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	293361 00	Melamine	Qatar	Qatar	Qatar Melamine Company	337	MT	US $
2	- do -	- do -	Qatar	Any country including Qatar	Any producer other than above	428	MT	US $
3	- do -	- do -	Any country other than	Qatar	Any	428	MT	US $

			subject countries					
4	- do -	- do -	European Union	Any country including European Union	Any	156	MT	US $
5	- do -	- do -	Any country other than subject countries	European Union	Any	156	MT	US $
6	- do -	- do -	Japan	Any country including Japan	Any	119	MT	US $
7	- do -	- do -	Any country other than subject countries	Japan	Any	119	MT	US $
8	- do -	- do -	United Arab Emirates	Any country including United Arab Emirates	Any	156	MT	US $
9	- do -	- do -	Any country other than subject countries	United Arab Emirates	Any	156	MT	US $

O. FURTHER PROCEDURE

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

Anant Swarup
(Designated Authority)