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**F. No. 6/8/2021-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 4th floor, 5, Parliament Street, New Delhi -110001**

Dated 27th October, 2022

NOTIFICATION

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of “Mono Ethylene Glycol (MEG)” originating or exported from Kuwait, Saudi Arabia and USA.

A. BACKGROUND OF THE CASE

Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter also referred to as the “Rules” or the AD Rules”) thereof:

1. The Designated Authority (hereinafter also referred to as the “Authority”) received an application from India Glycols Limited (IGL) and Reliance Industries Limited (RIL) (hereinafter also referred to as the “applicants” or the “domestic industry”) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as “the Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 as amended from time to time (hereinafter also referred to as “the Rules”) requesting for initiation of an anti-dumping investigation concerning imports of Mono Ethylene Glycol or MEG (hereinafter also referred to as the “subject goods” or the “product under consideration”) from Kuwait, Saudi Arabia and USA (hereinafter referred to as the “subject countries”).
2. The Authority, on the basis of a duly documented petition and prima-facie evidence submitted by the applicants, issued a notification F. No. 6/8/2021-DGTR, dated 28th June 2021, published in the Gazette of India Extraordinary, initiating the investigation in accordance with Section 9A of the Act read with Rule 5 of the Rules to determine the

existence, degree and effect of alleged dumping of the subject goods from Kuwait, Saudi Arabia and USA 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 regards to the subject investigation:
 - a. The Authority notified the Embassies of the subject countries in India about the receipt of the anti-dumping application before proceeding to initiate the investigation.
 - b. The Authority issued a public notice dated 28th June 2021 published in the Gazette of India Extraordinary, initiating an anti-dumping investigation concerning the imports of the subject goods from Kuwait, Saudi Arabia and USA.
 - c. The Authority sent a copy of the initiation notification dated 28th June 2021, to the Embassies of the subject countries in India, the known producers and exporters from the subject countries, known importers and other interested parties, as per the information made available by the applicants. The interested parties were requested to provide relevant information in the form and manner prescribed and to make their views known in writing within 30 days, in accordance with Rules 6(2) and 6(4) of the Rules. However, upon request from the interested parties, the time limit for making submissions was extended up to 7th September 2021.
 - d. The Authority provided a copy of the non-confidential version of the application filed by the applicants to the known producers / exporters from the subject countries and the Embassies of the subject countries in accordance with Rule 6(3) of the Rules.
 - e. The Embassies of the subject countries in India were also requested to advise the producers / exporters from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers / exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
 - f. The Authority forwarded a copy of the public notice initiating an anti-dumping investigation to the following known producers / exporters in the subject countries giving them an opportunity to make their submissions known in accordance with the Rule 6(4) of the Rules:
 - i. Equate Petrochemical Company, Kuwait
 - ii. The Kuwait Olefins Company (TKOC), Kuwait
 - iii. Arabian Petrochemical Company, Saudi Arabia
 - iv. Eastern Petrochemical Company (SHARQ), Saudi Arabia
 - v. Jana Jubail Chemical Industries Co., Saudi Arabia
 - vi. Jubail United Petrochemical Company, Saudi Arabia
 - vii. Rabigh Refining and Petrochemical Company, Saudi Arabia

- viii. Sadara Chemical Company, Saudi Arabia
- ix. Saudi Basic Industries Corporation (SABIC), Saudi Arabia
- x. Saudi Kayan Petrochemical Company, Saudi Arabia
- xi. Saudi Mechanical Industries Co. Limited, Saudi Arabia
- xii. Saudi Yanbu Petrochemical Company, Saudi Arabia
- xiii. Yanbu National Petrochemical Company (Yansab), Saudi Arabia
- xiv. Formosa Plastics, USA
- xv. Lotte Group, USA
- xvi. MEGlobal Americas Inc., USA
- xvii. Shell Chemicals Geismar I and II, USA
- g. The following producers / exporters have filed response to the exporter's questionnaire:
 - i. Arabian Petrochemical Company (Petrokemya), Saudi Arabia
 - ii. Eastern Petrochemical Company (SHARQ), Saudi Arabia
 - iii. Equate Petrochemical Company, Kuwait
 - iv. ExxonMobil Chemical Asia Pacific, Singapore
 - v. Jubail United Petrochemical Company (United), Saudi Arabia
 - vi. MEGlobal International FZE, UAE
 - vii. Mitsubishi Chemical Asia Pacific Pte. Limited, Singapore
 - viii. Mitsubishi Corporation, Japan
 - ix. Nan Ya Plastics Corporation, America, USA
 - x. Nan Ya Plastics Corporation, Texas, USA
 - xi. Rabigh Refining and Petrochemical Company, Saudi Arabia
 - xii. SABIC Asia Pacific Pte. Limited, Singapore
 - xiii. Saudi Basic Industries Corporation (SABIC), Saudi Arabia
 - xiv. Saudi Kayan Petrochemical Company, Saudi Arabia
 - xv. Saudi Yanbu Petrochemical Company (Yanpet), Saudi Arabia
 - xvi. SPDC Limited, Japan
 - xvii. The Kuwait Olfeins Compnay KSCC (TKOC), Kuwait
 - xviii. Yanbu National Petrochemical Company (Yansab), Saudi Arabia
- h. Further, Sadara Chemical Company filed a letter before the Authority clarifying that it had not exported the subject goods to India during the period of investigation.
- i. The Authority sent Questionnaires to the following known importers / users of subject goods in India seeking necessary information in accordance with Rule 6(4) of the Rules:
 - i. Alok Industries Limited
 - ii. Bhilosa Industries Private Limited
 - iii. Chiripal Poly Films Limited
 - iv. DNH Spinners Private Limited
 - v. Dow Chemical International Private Limited
 - vi. Filatex India Limited
 - vii. Futura Polyesters Limited

- viii. Garden Silk Mills Limited
- ix. Gokulanand Petrofibers
- x. Indorama Synthetics Limited
- xi. IVL Dhunseri Petrochem Industries Private Limited
- xii. JBF Industries Limited
- xiii. Jindal Poly Films
- xiv. KLJ Resources Limited
- xv. Rashmi Polyfab Private Limited
- xvi. Sanathan Textiles Private Limited
- xvii. Shree Durga Syntex Private Limited
- xviii. Shubhalakshmi Polyesters Limited
- xix. SRF Limited
- xx. Starchem Polytrade Private Limited
- xxi. Starlon Exim Private Limited
- xxii. Sumeet Industries Limited
- xxiii. The Bombay Dyeing and Manufacturing Co. Limited
- xxiv. Wellknown Polyesters Limited
- j. The following importers / users have filed response to the questionnaires issued by the Authority:
 - i. Bhilosa Industries Private Limited
 - ii. Filatex India Limited
 - iii. Garden Silk Mills Limited
 - iv. Indo Rama Synthetics (India) Limited
 - v. IVL Dhunseri Petrochem Industries Private Limited
 - vi. Jindal Poly Film Limited
 - vii. KLJ Resources
 - viii. Sanathan Textiles Private Limited
 - ix. The Bombay Dyeing and Manufacturing Co. Limited
- k. The Authority also sent notification to the following Associations asking them to intimate all their members regarding the initiation of the investigation and submit responses / comments, if any:
 - i. Associated Chambers of Commerce and Industry of India (ASSOCHAM)
 - ii. Chemicals and Petrochemicals Manufacturers Association (CPMA)
 - iii. Confederation of Indian Industry (CII)
 - iv. Federation of Indian Chamber of Commerce and Industry (FICCI)
- l. The following Associations have filed letters / submissions and have participated in the present investigation:
 - i. Textile Association (India) - Delhi
 - ii. PTA Users Association
- m. Written submissions were also received from the Government of Kingdom of Saudi Arabia and Embassy of State of Kuwait during the course of the investigation.

- n. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity to the interested parties to present their views orally in a public hearing held through video conferencing on 9 December 2021. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The parties shared their non-confidential version of their written submissions with other interested parties.
- o. In accordance with the provisions of Rule 17(1)(a), the Central Government extended the time period for extension of investigation by three months, till 27th September 2022.
- p. The period of investigation for the purpose of the present investigation is 1st January 2020 to 31st December 2020 (12 months). The injury analysis period includes 2017-18, 2018-19, 2019-2020 and the period of investigation.
- q. Transaction-wise imports data for the period of investigation and the preceding three years was procured from the DGCI&S. The Authority has relied upon data of DGCI&S for calculating the volume and value of imports of the subject goods in India.
- r. Further information was sought from the applicants to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the present investigation.
- s. The Authority made available the non-confidential version of the submissions made by various interested parties. A list of all the interested parties was uploaded on the DGTR website along with the request therein to all of them to email the non-confidential version of their submissions to all the other interested parties since the public file was not accessible physically due to ongoing global pandemic.
- t. The domestic industry has submitted financial data duly certified by their Chartered/Cost Accountant. The non-injurious price (NIP) has been determined based on the optimum cost of production and cost to make & sell the subject goods in India as per the information furnished by the domestic industry and in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules. Such non-injurious price has been considered to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- u. The submissions and arguments made by the interested parties and the information provided by the various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in these final findings.
- v. The Authority, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of these final findings, by verifying the data / documents submitted by the domestic industry to the extent possible.

- w. Information provided by the interested parties on confidential basis was examined with regard to 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 the other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- x. 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 these final findings on the basis of the facts available.
- y. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 23rd September, 2022 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- z. *** in these final findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- aa. The exchange rate adopted by the Authority for the subject investigation is 1 US \$= Rs. 74.99.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

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

“3. The product under consideration for the purpose of the present investigation is Mono Ethylene Glycol, also known as MEG or Ethylene Glycol. Mono Ethylene Glycol is a clear, colourless, virtually odourless, and slightly viscous liquid. It is miscible with water, alcohols, and many organic compounds. Its chemical formula is C₂H₆O₂. It can be stored in stainless steel, aluminium, or lined drums, tank cars or tank trucks. It has a specific gravity of 1.114 and a flash point of 110 °C (closed cup).”

C.1. Submissions made by other interested parties

5. The following submissions have been made by other interested parties with regard to the scope of the product under consideration and like article:

- a. Bio-MEG produced and sold by IGL is a different product considering the difference in production process. RIL produces MEG using naphtha or ethane whereas IGL produces Bio-MEG using molasses.
- b. Bio-MEG is not generally sold in India but exported to companies who want to earn carbon credits, and as such, RIL and IGL are not catering to the same customers.
- c. Producers in Saudi Arabia have not exported Bio-MEG to India.
- d. The Authority may kindly analyse the need for formulating a PCN for the purpose of injury analysis, considering the difference in raw materials and production process of Bio-MEG and MEG.

C.2. Submissions made by the domestic industry

6. The following submissions have been made by the domestic industry with regard to the scope of the product under consideration and like article:
 - a. The domestic industry has produced like articles to the subject goods imported from the subject countries.
 - b. The domestic industry has produced three types of MEG, namely fibre-grade, technical / non-fibre grade and Bio-MEG. While fibre-grade and technical / non-fibre grade MEG are produced using ethylene made from ethane, propane, butane, naphtha, etc., Bio-MEG is produced using ethylene made from bio-ethanol.
 - c. Bio-MEG produced by IGL is same as the fibre-grade and technical / non-fibre grade MEG produced by RIL and imported from the subject countries, in terms of physical and technical characteristics as well as end-uses.
 - d. Mere difference in the inputs used for production of ethylene, which is the major raw material, cannot render the product as unlike products, as per the practice of the Authority in the case of Sodium Hydrosulphite from China PR and Korea RP.

C.3. Examination by the Authority

7. The product under consideration in the present investigation is Mono Ethylene Glycol, also known as MEG or Ethylene Glycol. Mono Ethylene Glycol is a clear, colourless, odourless, and slightly viscous liquid. It is miscible with water, alcohols, and many organic compounds. Its chemical formula is $C_2H_6O_2$. It can be stored in stainless steel, aluminium, or lined drums, tank cars or tank trucks. It has a specific gravity of 1.114 and a flash point of 110 °C (closed cup).
8. Mono Ethylene Glycol is majorly used as a chemical intermediate in the production of polyester fibres, polyester films, and resins such as polyethylene terephthalate (PET). PET is converted into plastic bottles which are used globally. Further, MEG is also used

in the fibre treatment of textiles, the paper industry, and in adhesives, inks, and cellophane due to its humectant properties. It is also used as a dehydration agent in natural gas pipelines where it inhibits the formation of natural gas clathrates before being recovered from the gas and reused.

9. Mono Ethylene Glycol is generally produced using two basic raw materials, ethylene and oxygen. Ethylene and oxygen are combined to produce ethylene oxide (EO) in a multi-tubular catalytic reactor. The highly exothermic reaction is carefully controlled with proprietary and effective safety systems developed by scientific design. EO produced in the reactor is separated to high quality purified EO and/or is further processed to produce fiber-grade Mono Ethylene Glycol (MEG) as well as di- and tri- ethylene glycols (DEG, TEG).
10. With regard to the claim that Bio-MEG produced using ethylene made from bio-ethanol is different than MEG produced using ethylene made from ethane, propane, butane, naphtha, etc., it is noted that Bio-MEG has essentially same technical / physical characteristics as MEG produced using ethylene made from ethane, propane, butane, naphtha etc. Both the products are produced using the same raw material, namely ethylene. The fact that the production process of the raw material, ethylene, is different is not relevant. Further, the domestic industry has submitted that both types of MEG are used for the same applications and various customers use both types of MEG interchangeably. Therefore, it is noted that Bio-MEG and MEG produced from ethane/propane/butane are not different products.
11. As regards the request for a separate PCN-wise examination, it is noted that none of the interested parties have raised this request in response to the notice of initiation. Rather, the request for a PCN-wise analysis has been made only at the belated stage of rejoinder submissions, i.e. much after the submission of all responses and other information. Moreover, there is no difference between Bio-MEG and MEG as such. Accordingly, the Authority does not find it appropriate to conduct PCN wise analysis.
12. The product under consideration is classifiable under Chapter 29 under the tariff code 2905 31 00. The customs classification is only indicative and is not binding on the scope of the present investigation.
13. The Authority notes that the subject goods produced by the domestic industry and that imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. The consumers importing the product under consideration have also purchased the same from the domestic industry. In view of the same, Authority

holds that the goods produced by the domestic industry are like article to the product under consideration imported from subject countries.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Submissions made by the other interested parties

14. The following submissions have been made by the other interested parties with regard to the scope of the domestic industry and standing:
 - a. The Authority must call for information from IOCL, as done in the case of PTA where information was submitted a day before the issuance of disclosure statement.
 - b. The Authority must also request BPCL to provide their project report, to analyse the prospects which the producer has seen and decided to make investment, despite alleged material injury and severe threat of material injury

D.2. Submissions made by the domestic industry

15. The following submissions have been made by the applicants with regard to the scope of domestic industry and standing:
 - a. The application has been filed by India Glycols Limited (IGL) and Reliance Industries Limited (RIL), who account for a major proportion of the total domestic production in the country and satisfy the requirements under Rule 5(3) of the Anti-Dumping Rules.
 - b. The applicants have not imported the subject goods and are not related to any foreign producers / exporters of subject goods or importers of subject goods in India.
 - c. The applicants have no reservations with regards to any information being sought from Indian Oil Corporation Limited, the other producer of the subject goods and Bharat Petroleum Corporation Limited, which is in the process of setting up a plant.

D.3. Examination by the Authority

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

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

17. The application has been filed by India Glycols Limited and Reliance Industries Limited. The applicants are neither related to any producers or exporter of the subject goods in the subject countries or importers of subject goods in India, nor have they imported subject goods from the subject countries. There is one other producer of the subject goods in the country, Indian Oil Corporation Limited, which has neither supported nor opposed the present investigation.
18. The other interested parties had submitted during the oral hearing that Indian Oil Corporation must be called upon to participate in the investigation and submit its information. It is noted that the Authority or the applicants cannot compel any party to participate in an investigation and submit information. The Authority is only required to ascertain whether the applicants' production meets the requirement of the domestic industry under the law. However, it is noted that Indian Oil Corporation has submitted a letter claiming that they are also suffering because of dumped imports from middle east countries.
19. The total domestic production has been determined on the basis of the details provided by the applicants. The applicants account for more than 80% of the total domestic production in India. Further, none of the other producers have supported or opposed the present investigation. The Authority therefore holds that the applicants constitute domestic industry within the meaning of Rule 2(b) of the Anti- Dumping Rules and the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1. Submissions made by the other interested parties

20. The following submissions have been made by the other interested parties with regard to confidentiality:
 - a. The domestic industry has claimed excessive confidentiality and have failed to provide a non-confidential summary of productivity, export price, R&D expenses, funds raised, return on investment, alleged capacity expansion in the subject countries and costs of the domestic industry.
 - b. The domestic industry has claimed excessive confidentiality with regard to capacity, production, capacity utilization and sales.
 - c. The domestic industry has not provided information with regard to constructed normal value.
 - d. The domestic industry has claimed excessive confidentiality with regard to manufacturing process, volume and value of production by other producers and non-injurious price calculation which is in violation of Trade Notice No. 1/2013 and 10/2018.

- e. Policies relating to purchase, sales, accounting, cost accounting and quality control procedure and information contained in Section-VI have been claimed confidential without any reason.
- f. Information relating to utilities consumption, cost of production, raw material and packing material consumption for the period of investigation and injury period has not been provided even in indexed form.
- g. The domestic industry must be compelled to provide the information requested under the relevant trade notice which is a practice followed by the Authority.
- h. The Authority has failed to request meaningful summary of confidential information from the domestic industry, which has violated Article 6.5.1 and has impaired the right to defense of the Kingdom of Saudi Arabia.
- i. Neither the Authority nor the domestic industry thus far have provided the transaction-wise import data in Excel to all the interested parties which is in violation of the decision taken in Exotic Décor Pvt. Ltd. and Ors. v. Designated Authority.
- j. The information relating to the specifics of Indian customers and supply chain was claimed confidential since the domestic industry are potential competitors and disclosure of which may result in prejudice to business interest of Mitsubishi Corporation, which is in consistence with the approach taken in "Uncoated Copier Paper" from Indonesia and Singapore. However, in the interest of cooperation, Mitsubishi Corporation is now disclosing that it supplies the subject goods to un-related end users in India.
- k. Mitsubishi Corporation being a purely trading company, its operating margins are business- sensitive and highly confidential information that needs to be protected from the competitor trading entities and therefore the performance selling price and cost of MEG have not been disclosed. However, such information is available with the Authority and thus does not hamper the investigation or prejudice the interested parties. As per Trade Notice 10/2018, the Authority may permit deviation from the guidelines contained therein.
- l. There is no requirement to disclose channel of sales and distribution as per Trade Notice 10/2018.
- m. The applicants have not placed any evidence on record regarding any publicly available information not shared by ExxonMobil.
- n. Nan Ya Plastics Corporation has filed complete information. Certain information such as related party transactions have not been provided in the non-confidential version as the same is business sensitive in nature.
- o. Wood Mackenzie Report has not been shared even though Trade Notice 1/2013 states that that information available in public domain should be disclosed. The Authority being quasi-judicial is bound to follow principles of natural justice.
- p. With regard to claims of non-disclosure of information pertaining to purchase of raw materials and inputs, it is submitted that such information is not available in the public domain and thus cannot be disclosed.

- q. The domestic industry has failed to substantiate the claim that information relating to corporate structure of SABIC is available in the public domain.

E.2. Submissions made by the domestic industry

21. The following submissions have been made by the domestic industry with regard to confidentiality:
 - a. Some of the responding producers have claimed their entire channel of distribution as confidential, preventing the domestic industry from commenting on completeness of the value chain.
 - b. Mitsubishi Corporation has claimed their entire performance parameters as confidential.
 - c. Disclosure of trends pertaining to sales quantity, selling prices etc. cannot result in disclosure of any confidential business proprietary information of Mitsubishi Corporation.
 - d. All the responding producers have claimed complete confidentiality on whether raw materials are purchased or captively produced. Further, information regarding purchase of raw material and utilities from related parties has also been claimed as confidential.
 - e. Adjustments claimed with reference to normal value and export price have also been claimed to be confidential.
 - f. The responding producers have not provided information regarding (i) related entities involved in the production and sale of subject goods, (ii) ownership of own company or holding group, (iii) financial and contractual link, (iv) list of products produced and (v) audited financial statements, even where such information is publicly available.
 - g. The foreign producers have not provided information regarding write-up of manufacturing process and raw materials used, in violation of Trade Notice 10/2018.
 - h. The foreign producers have claimed complete confidentiality regarding details about production facilities, adjustment for start-up cost and post-invoicing discounts, if any.
 - i. Disclosure of information pertaining to capacity, sales volume and value, production and costs of the domestic industry would adversely impact the domestic producers in inter-se competition, competition with other producers, and their ability to negotiate prices. Further, the GCC-TSAIP itself considers such information as confidential.
 - j. Since the R&D expenses and fund raised were not identifiable separately for the subject goods, the same can be taken from publicly available financial statements.

- k. Since the constructed normal value is based on the conversion cost of domestic industry, disclosure of the same would be highly prejudicial to the competitive interests of the domestic industry.
- l. Transaction-wise import data is provided in PDF format as required under Trade Notice 7/2018. Further, the CESTAT order in Exotic Décor v. Designated Authority, was issued when the Authority did not authorize interested parties to obtain data directly from the DGCI&S.
- m. The domestic industry has disclosed non-injurious price and injury margin in range.
- n. Since there exists only one other domestic producer in the country, disclosure of its volume of production of one would result in disclosure of actual data of the other producer. Thus, the total Indian production has been duly disclosed.
- o. Information contained in Section VI is business proprietary information and cannot be disclosed to the interested parties.

E.3. Examination by the Authority

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

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

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

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

23. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claims. On being satisfied, the Authority

has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidence submitted by interested parties by directing the interested parties to share the non-confidential version of their submissions with each other through e-mails.

24. The interested parties have contended that the domestic industry has not disclosed information pertaining to capacity, production, sales, return on investment, costs and information contained in Section-VI. The Authority notes that such information is confidential by nature, and has accepted the confidentiality claimed by the domestic industry.
25. With regards to information relating to the volume and value of production of the other producers, it is noted that since there exists only one other producer of MEG in the country other than the applicants, disclosure of the volume of production of such producer would lead to disclosure of the actual information of such producer, which would be detrimental to the competitive interest of the producer. However, the total domestic production has been disclosed.
26. The other interested parties have also claimed that the domestic industry has failed to disclose their manufacturing process. The Authority notes that a brief write-up of the manufacturing process along with the raw materials used has been provided in the non-confidential version of the petition. The interested parties have contended that the domestic industry has not disclosed the R&D expenses and funds raised. The Authority notes that the domestic industry has explained that such information was not identifiable separately for the product under consideration in the financial statements. The interested parties have not explained the prejudice caused to them by non-disclosure of such information.
27. With regards to the DGCI&S data, the Authority notes that the data has been shared with the interested parties relating to volume & value of the imports from exporting countries into India. Further, the applicants have provided a complete list of transaction wise import data. The Authority holds that procedure for sharing and procuring the import data has been laid down in the Trade Notice 07/2018 dated 15th March 2018 and the Authority notes that the procedure now being applied is consistent and uniform across all interested parties and investigations and provides adequate opportunity to the interested parties to defend their interests.
28. With regard to non-disclosure of constructed normal value, it is noted that the normal value determined at the stage of initiation was based on conversion of cost of production

of the domestic industry. The disclosure of such information would have a significant adverse impact on the competitive interests of the domestic industry. In any case the dumping margin determined based on such normal value has been provided in range.

29. With regard to the claim that the domestic industry has failed to provide the Wood Mackenzie report along with the non-confidential submissions, it is noted that the domestic industry has submitted that the report is a third party information which it is not authorized to disclose. Therefore, the Authority holds that the domestic industry has not claimed excessive confidentiality on this count.
30. With regard to the contentions of the domestic industry concerning the excess confidentiality claimed by the responding foreign producers / exporters, it is noted that the Authority has examined the confidentiality claims made by the responding foreign producers / exporters and on being satisfied the Authority has accepted the confidentiality claims, wherever warranted.

F. MISCELLANEOUS ISSUES

F.1. Submissions made by the other interested parties

31. The following miscellaneous submissions have been made by the other interested parties:
 - a. The initiation of the investigation was not appropriate as the domestic industry was required to provide reasonably relevant evidence necessary to support a prima facie case.
 - b. As held by the Panel in Guatemala – Cement II, an investigation can be initiated only if there is sufficient evidence to justify the same, which was not present in this case. The type of information sufficient to impose anti-dumping duty is the type of information that must be provided to initiate an investigation. Such position was also taken by the Panel in US – Softwood Lumber and Mexico – Steel Pipes and Tubes.
 - c. The domestic industry has requested initiation of investigation only four months after willfully requesting termination of previous investigation concerning same product, without providing additional grounds that justify such initiation. Since repeated investigations concerning the same product have a trade chilling effect and impact the stability and predictability of market access. The Authority must consider economic, commercial and policy implications before initiating the investigation.
 - d. The initiation of back-to-back investigations against Kuwait is disruptive of trade.
 - e. The new petition filed by the domestic industry is targeting the same imports just after termination of the previous investigation, even though the Authority did not find any dumping, injury and causal link in the previous investigation.

- f. India has initiated 24 investigations concerning imports from Saudi Arabia, particularly for chemical and petrochemical products, while GCC has initiated only 2 investigations against Indian imports. This has impacted Saudi Arabian exports and has negated its natural comparative advantage.
- g. India targets exports from Saudi Arabia the most as it has initiated as many investigations as all the other WTO members put together. Anti-dumping instrument should only be used in exceptional circumstances and when the conditions set forth in the Anti-Dumping Agreement are satisfied.
- h. Saudi Arabia is the fourth largest trading partner for India and a major energy supplier. Excluding fuels, India has a trade surplus with Saudi Arabia, and exports from India to Saudi Arabia have been increasing in the last three years.
- i. The period of investigation and preceding year, 2019-20, have three common months. Comparison of two similar sets of data does not provide an unbiased picture. in line with the findings of Appellate Body in Mexico – Anti-Dumping on Rice.
- j. The domestic industry should have provided data for the period of investigation as well as calendar years 2017, 2018 and 2019 which would provide an objective assessment.
- k. The period of investigation determined is not appropriate as it is affected by Covid-19, and the lockdowns imposed pursuant to that.
- l. The domestic industry should not be allowed to file submissions at any stage of the investigation as it wishes. Regardless the name of the association, the members are users and importers of MEG and thus, are interested parties in the present investigation.

F.2. Submissions made by the domestic industry

32. The following miscellaneous submissions have been made by the domestic industry:
 - a. PTA Users Association cannot be considered as an interested party since it has participated as an association of PTA users and not MEG users, in investigations before the Authority and before courts.
 - b. The PTA Users Association has not addressed the concerns raised by the domestic industry regarding its status as an interested party. It is merely being used as a platform to raise baseless objections in mala fide manner.
 - c. PTA Users Association has misled the Authority by identifying itself as Polyester Textiles and Apparel Association since none of the members of the association are users of polyester textile or apparel but producers of the upstream product. Further, every individual in the country is a user of polyester textile and apparels, but is not a member of the Association.
 - d. PTA Users Association identifying itself as Polyester Textile and Apparel Association amounts to misrepresentation of facts having previously appeared before the Authority and higher courts as association of PTA users.

- e. The bylaws of the Association must be examined to establish if it is authorized to represent the interests of MEG users.
- f. The responding producers / exporters must provide a detailed checklist to establish the completeness of response and the Authority must disallow addition of any new information beyond the response, which has been the case in the investigation on Glass fibre from Bahrain and Egypt.
- g. Contrary to the claim of the other interested parties, the Authority satisfied itself as to the accuracy and adequacy of the evidence presented in the petition at the stage of initiation itself.
- h. Initiation of investigation only requires a prima facie satisfaction of the Authority, as held by the Rajasthan High Court in Rajasthan Textile Mills Association vs. Dir. General of Anti-Dumping and by the Tribunal in Huawei Technologies Co. Limited vs. DA and Automotive Tyre Manufacturer's Association vs. DA.
- i. The domestic industry is only required to provide information reasonably available to it, which was shared in the petition itself, as held by WTO Panel in US – Softwood Lumber.
- j. Initiation of fresh investigation post-termination is not prohibited under any law. Further, while India had earlier proposed in 1999 and 2002 that back-to-back investigations be discouraged but the same was rejected by the WTO members, including Saudi Arabia.
- k. Contrary to the claims of the interested parties, the Authority made no determinations regarding dumping or injury in the previous investigation and the investigation was withdrawn by the domestic industry itself.
- l. While India has initiated 24 investigations against Saudi Arabia, it has imposed duties only against a few products.
- m. Initiation of multiple trade remedial investigations against Saudi Arabia is on account of high trade between the countries and price sensitivity of Indian market, leaving high chances of unfair trade practices.
- n. Exports from Saudi Arabia to India are nearly 4 times than exports from India to Saudi Arabia and as such, India has a trade deficit in fuels, fertilisers, plastics, organic and inorganic chemicals.
- o. The domestic industry has not made any large gains on account of initiation of present investigation, as claimed by other interested parties, since it is still earning a very low rate of return due to dumping of subject goods.
- p. The period of investigation and injury period in the present investigation are in line with Trade Notice Nos. 2/2021 and 2/2004, which allow overlap between period of investigation and previous years to ensure no gap between the injury period. Further, it is provided that injury period must comprise of previous three financial years.
- q. While the Governments of the subject countries have raised objections regarding overlapping period of three months in the injury period and consideration of

equivalent period as injury period, the GCC-TSAIP in its investigation concerning tiles from India has not adopted a similar approach.

- r. Observations of WTO Appellate Body in Mexico – Beef and Rice are not applicable to the present case since the period of investigation is determined based on most recent period and no period has been selectively removed from injury analysis.
- s. While the domestic industry raised arguments regarding particular market situation prior to initiation, none of the interested parties presented any factual submissions to disprove such claims.

F.3. Examination by the Authority

- 33. The other interested parties have questioned the appropriateness of the initiation of the investigation and have contended that the domestic industry should have provided relevant evidence to support a prima facie case.
- 34. The Authority notes that the investigation was initiated based on proper evidence. It is further noted that a determination regarding imposition or non-imposition of duty is based on the information that flows during the course of the investigation. Article 5.2 of the Agreement provides that an application for initiation of anti-dumping investigation must contain information as is reasonably available to the applicant. Further, at the time of initiation, the Authority is only required to prima facie satisfy itself of the evidence regarding dumping, injury and the causal link . The Hon’ble Rajasthan High Court in the case of Rajasthan Textile Mills Association vs. Dir. General of Anti-Dumping [2002 (149) E.L.T. 45 (Raj.)] while interpreting the observations of the WTO Panel in Guatemala – Cement-II, held as follows –

“37. ... The Panel dealing with the accuracy and adequacy of evidence observed that if the information supplied in the application is all that reasonably available to the applicant as required by Article 5.2, the investigating authority is justified in initiating the investigation. At the stage of justification of initiation of investigation, the Designated Authority is not required to hold a detailed inquiry but he has to prima facie satisfy as to whether the application is supported by the evidence in relation to dumping, injury and causal link between the dumped import and alleged injury.”

- 35. Hon’ble CESTAT too in Automotive Tyre Manufacturers’ Association Vs. Designated Authority has taken the view that the nature of evidence required for the purpose of initiation may not be of the same quality and quantity as required for final imposition of duty. In the present case, the applicants submitted information and evidence as was reasonably available to them. Having been satisfied with the prima facie evidence placed before it, the Authority initiated the investigation.

36. The other interested parties have also raised concerns regarding the initiation of present investigation soon after termination of the investigation initiated earlier. It is noted that under the WTO Anti-dumping Agreement or the Anti-dumping Rules, there exists no such restriction with regard to time gap between termination of an investigation and subsequent initiation of investigation against the same product. Further, no finding regarding dumping, injury or causal link was made by the Authority in the previous investigation and the same was terminated due to withdrawal of petition on the request of the domestic industry.
37. The Authority also notes that while the interested parties have claimed that there is a trade chilling effect of such investigations and initiation of investigation after recent termination confers undue gains on the domestic industry, the Authority further notes that WTO members are allowed to conduct anti-dumping investigations to remedy the injury caused to the industry due to dumping, as and when it happens. Anti-dumping investigations conducted within the purview of the WTO Anti-dumping Agreement cannot be considered as violating any concessions granted under the WTO Agreements. The purpose of anti-dumping investigation and subsequent measures is not to restrict or hamper trade. The imposition of anti-dumping measures would only ensure that no unfair advantage is gained by the dumping practices, while remedying injury caused to the domestic industry and ensure availability of fairly priced goods in the market.
38. With regard to the issues concerning the period of investigation and injury period, it is noted that Rule 5 (3A) of the Rules provides that the period of investigation shall not be older than six months at the time of initiation of investigation. Further, as per Trade Notice No. 2/2004 dated 12th May 2004, the injury period must comprise of the period of investigation and previous three financial years, which may overlap in order to avoid any gaps during such period. The period of investigation and the injury period in the present investigation satisfy the requirements of the Anti-Dumping Rules and the Trade Notices issued by the Authority in this regard.
39. As regards the argument that the domestic industry has raised issue of particular market situation belatedly, the Authority notes that the issue regarding particular market situation prevailing in Saudi Arabia and Kuwait was raised by the domestic industry in its application and this issue was duly noted in the initiation notice itself. Accordingly, the submissions made by interested parties that the issue of particular market situation was raised belatedly, cannot be accepted.
40. The domestic industry has raised concerns with regard to participation by the PTA Users Association as an interested party in the present investigation. It has been claimed that such Association cannot be an interested party since it is an Association of PTA Users and not MEG users. The Authority notes that members of this Association are also users

of MEG and therefore PTA Users Association has locus standi to participate as an interested party in this investigation.

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

G.1. Submissions made by the other interested parties

41. The following submissions have been made by the other interested parties with regard to determination of normal value, export price and dumping margin.
- a. There is no change in the allegations concerning particular market situation as compared to the previous investigation, which was terminated due to withdrawal of application by the domestic industry.
 - b. The domestic industry has constructed normal value using cost of production without justifying the statutory exceptions under Article 2.2.
 - c. The domestic industry has not provided evidence of efforts made to obtain the domestic prices prevailing in Saudi Arabia. Limited access to information cannot be ground for not considering domestic prices in the subject country for determination of normal value under Article 2.2.
 - d. The domestic industry used the cost structure of Indian producers of MEG to construct the normal value for Kuwait, which is not in line with the requirements of Section 9A(1)(c)(ii)(b) of the Customs Tariff Act because costs in India and Kuwait are different.
 - e. The normal value submitted by the domestic industry is higher by 80% to 224% than the actual cost of production in Kuwait.
 - f. The domestic industry has not provided evidence to show existence of particular market situation with regard to MEG, and has merely alleged that government intervention in feedstock leads to particular market situation for MEG in Saudi Arabia and Kuwait.
 - g. There is no basis to conclude that state ownership or control automatically implies “particular market situation” within the Anti-Dumping Agreement, in absence of any government control over the prices.
 - h. Practices from different jurisdictions such as Canada, European Union, UK and Australia as well as practice in India substantiate that government control does not ipso facto result in a particular market situation.
 - i. Contrary to the submissions of the applicants, Article 6(a)(b) of Regulation (EU) 2016/1036 refers to the right of the Commission to disregard prices or costs in case of significant distortions, which is different from disregarding the domestic market sales due to particular market situation.
 - j. While the domestic industry has claimed that EQUATE and TKOC are government-owned entities, they are owned in majority by private investors.

- k. Contrary to the submissions of the applicants, the CEO of KPC is a professional executive and not the Minister of Oil. While PIC is a partial owner of EQUATE and TKOC, KPC does not own these entities.
- l. Since there are no representative domestic sales in Kuwait, the allegation of particular market situation is irrelevant.
- m. The US DOC has also rejected the allegations of particular market situation based only on existence of government control over prices in the investigations concerning certain cold rolled and corrosion resistant carbon steel flat products from Korea RP and certain durum wheat and hard red spring wheat from Canada.
- n. The three situations mentioned in Article 2.2, including the particular market situation, are only in the context of the “like product” or the product under consideration, and not in the context of input cost or raw material cost.
- o. While Canada, USA and EU amended their law to include the raw material distortions under the ambit of particular market situation, no such amendment has been made in the Indian law.
- p. Reliance on the findings of the Authority in the case of polypropylene is not appropriate as such findings predate the recent interpretation by the Appellate Body.
- q. Regulated pricing of feedstock is consistent with WTO rules. In absence of any additional comments with regard to such regulated pricing in the Accession Protocol, as in the case of China, the prices of feedstock cannot be rejected by a WTO member.
- r. Regulated pricing does not mean distorted pricing, as prices at which feedstock are supplied are commercially based and ensure the full recovery of production costs and a reasonable profit. Government of India maintains price regulations in a number of products as well.
- s. The feedstock is available to all users within Saudi Arabia on a non-discriminatory basis.
- t. The Trade Policy Review reveals that the price regulation for natural gas and ethane is intended to ensure that licensees realize a commercial rate of return suitable for the development and exploitation of natural gas resources in the Kingdom.
- u. The domestic pricing of NGLs is commercially based. The Council of Ministers Regulation set out a detailed formula for ensuring that the prices of NGLs are based on international market prices, adjusted for cost-based and other commercial considerations.
- v. There is a difference between actual prices and the published prices on account of differences in terms of sale, after-sale price adjustments, discounts, etc.
- w. The feedstock prices are lower in the Middle East and US because of the regional advantage of oil abundancy and production/supply chain efficiencies.
- x. With regard to the submission of the applicants that the consumers are buying at the lowest prices without long term procurement policies, it is submitted that commercial decisions of consumers cannot be addressed by the Authority.

- y. Since the producers in the country produce ethylene from ethane, and not naphtha, their cost of production is lower.
- z. The cracker plants in Saudi Arabia are located very close to the plant producing downstream products leading to overall efficiency in production costs. By comparison, in India, RIL is forced to import ethane, which entails very high costs.
- aa. The cost of ethylene in USA (260 USD per MT) and Saudi Arabia (200 USD per MT) is much lower than the price in India (500 USD per MT). The difference is on account of natural advantages.
- bb. As the price of feedstock used for the production of domestically-sold and exported MEG is identical, there cannot be a particular market situation within the meaning of Article 2.2.
- cc. Absence of particular market situation in Saudi Arabia has been confirmed in final findings of the DGTR in more than 20 anti-dumping investigations against Saudi Arabia namely Clear Float Glass from Pakistan, Saudi Arabia and UAE, Normal Butanol or N Butyl Alcohol and Pentaerythritol from Saudi Arabia etc.
- dd. Saudi Aramco has sold ethane to Petro Rabigh on non-discriminatory basis and at arm's-length prices and the prices at which Saudi Aramco has supplied to unrelated entities.
- ee. Supply arrangements between SABIC and Saudi Aramco were entered into when both entities were not related. Such prices did not undergo any change pursuant to the acquisition.
- ff. Price of inputs set by the government are applicable for all market players regardless of any relationship with the government or between the input supplier and producer of MEG.
- gg. The onus to prove that price of inputs received from affiliated parties are not at arm's length lies with the domestic industry.
- hh. If the Authority wishes to adjust the normal value for the input price distortions, same adjustments must be made to export price since the input price is same regardless of markets.
- ii. Domestic industry has not provided any information regarding the existence of particular market situation in Kuwait.
- jj. There is not one unified GCC feedstock market and the different feedstock producers in the different GCC States price their products differently. Trade Policy Review of Kuwait has established that "with some exceptions, prices of goods and services are freely determined by the market". There is no evidence that the cost of production of the producers in Kuwait is distorted in domestic or export market.
- kk. Publicly available information confirms that the prices of feedstock are at arm's length prices.
- ll. If the applicants are concerned about alleged distortion, the remedy is provided under the Agreement on Subsidies and Countervailing Measures.

- mm. The Authority has consistently, in the past decided to examine the issue of availability of raw material at less than adequate remuneration through an anti-subsidy investigation.
- nn. The mere existence of particular market situation is inconsequential unless there is a significant basis to establish that the same affects the proper comparison of the domestic sales with export price, as held by the Panel in EC – Cotton Yarn, Australia –A4 Copy Paper and EU – Tube or pipes.
- oo. The onus of establishing the existence of particular market situation and that it does not permit proper comparison of domestic price with the export price lies with the party claiming it.
- pp. The price of inputs and cost of production as per the records of the Saudi producers is common for both domestic and exported product. The producers do not sell in domestic market at a discount, as compared to export price.
- qq. The domestic industry has not provided any evidence to substantiate their claim that there are no imports of subject goods into Saudi Arabia and Kuwait.
- rr. The domestic industry has failed to explain how domestic markets in Saudi Arabia and Kuwait would not compete with each other.
- ss. Comparison of domestic price of ethane with landed price of imports in Saudi Arabia is contrary to the Panel’s observation in Australia – A-4 Copy Paper which referred to comparison of domestic price with cost and not export prices with cost. Further, cost refers to cost of production and not merely cost of raw material, such as ethane.
- tt. Mere affiliation is not a ground to reject the input costs as long as it reasonably reflects the cost of production and sale of the product concerned in the country of origin. Petro Rabigh has given information to show purchase of ethane from related parties in the response.
- uu. The WTO Appellate body in Ukraine-Ammonium Nitrate case held that non-arm’s length cannot be considered to be an exception to Article 2.2.1.1
- vv. Input prices being lower than international price due to existence of particular market situation cannot lead to a conclusion that the records of the producer do not reasonably reflect the cost of production of the subject goods, in accordance with Article 2.2.1.1 and interpretation thereof by the Appellate Body in Ukraine – Ammonium Nitrate, EU – Biodiesel and EU – Cost adjustment.
- ww. Contrary to claims of domestic industry, the word ‘normally’ has been used in conjunction with ‘shall’ in Article 2.2.1.1 to indicate that while exceptions may exist, records of the producer must be relied upon while constructing cost of production if the two explicit conditions are met.
- xx. Even if the Authority holds that particular market situation exists, normal value can only be determined based on third country selling price and/or cost of production as per the principles laid down in the Customs Tariff Act. The actual cost of production of the producer should be considered in this regard.

- yy. The reliance on Ukraine – Ammonium Nitrate and European Union – Cost Adjustment Methodologies are inappropriate, as they relate to determination of input costs, once it is ascertained that the market prices of MEG cannot be used to determine normal value.
- zz. Constructed cost of production based on unadjusted prices of ethylene prevailing in international markets does not reflect the actual cost of production in Saudi Arabia and is violative of Article 2.2, as per the interpretation of the Appellate Body in European Union – Biodiesel and Ukraine – Ammonium Nitrate.
- aaa. The domestic industry has made no attempt to adjust the ethylene price used for the construction of the normal value to reflect the actual cost of production in the subject countries.
- bbb. Cost & Freight prices of ethylene prevailing in GCC region cannot be used to determine normal value as normal value is country specific and general price prevailing in the entire region which includes non-subject country cannot be used. Further, such price includes the cost of freight to South-East Asia, which is not incurred by producers in Saudi Arabia and Kuwait.
- ccc. Normal value cannot be determined based on prices published in journals which are based on assumptions and presumptions.
- ddd. The domestic industry's request to include interest and depreciation cost while computing cost of ethylene cannot be accepted since the same is not permissible under the law.
- eee. European Commission in the investigation concerning imports of MEG from Saudi Arabia accepted the entire cost reported by the exporters from Saudi Arabia in its final findings.
- fff. Selling, general and administrative expenses costs must be determined based on records kept by the producers, unless the Authority determines that there are no sales in the ordinary course of trade, in accordance with Article 2.2.2.
- ggg. The petitioners have added customs duty, insurance and port expenses only for the purpose of inflating the normal value.
- hhh. Since RIL has previously imported the subject goods from Kuwait, it should have known that no inland freight, commission or port expenses are borne by producers in Kuwait.
- iii. Contrary to the submissions of the applicants, the channel of distribution from Kuwait is complete and all relevant entities have participated in the present investigation.
- jjj. MEGlobal Americas Inc. has no role to play in the value chain relating to exports from Kuwait and therefore its non-participation has no impact on the participation and responses of the exporters. In order to benefit from individual duty rates, MEGlobal Americas Inc. would first have to ship the goods to Kuwait and incur additional costs that would defeat the purpose of any perceived advantage and also go through the onerous task of obtaining a false certificate of origin from Kuwait.

- kkk. The non-participation of Mitsubishi International Corporation is not relevant. The guidelines issued by the Authority regarding filing the questionnaire along with its unrelated exporter is impractical since the producer does not have control over its unrelated exporters.
- lll. In past investigations, the Authority has determined the net export price based on price at which the producer has sold to exporter, and not the price at which the exporter has in turn sold to India.
- mmm. Mitsubishi Corporation is the ultimate exporter of goods and has participated and reported details of its export sales to India. Therefore, the Authority has all the information available with it for calculation of landed value and for calculation of individual dumping margin and injury margin.
- nnn. As per the response of Mitsubishi Corporation, MIC has acted only as an agent thereof.
- ooo. Export price and normal value can be established without the participation of MIC USA as MIC USA is a trader of MEG and does not manufacture or produce MEG captively. MC had purchased limited MEG consignments from MIC USA during the period of investigation which in turn were purchased from Nan Ya Plastic by MIC USA. Purchases from MIC were very in limited quantity and do not constitute substantial imports in India.
- ppp. In case the Authority is of the view that data of MIC is necessary, MC is willing to submit the same.
- qqq. Petro Rabigh has not provided its exports to third countries as normal value would be determined based on domestic sales of the group of affiliated parties.
- rrr. Petro Rabigh has participated in the present investigation, as it is related to SABIC who has exported the subject goods to India. Petro Rabigh cannot opt for filing new shipper review application in case it decides to export the goods to India in future.
- sss. The channel of distribution stated in the response of Petro Rabigh is the general channel followed by it, but it did not sell through these entities during the period of investigation.
- ttt. The petitioner has relied upon the Rubber chemical findings which is not applicable to this present investigation as Saudi Arabia is a market economy country and the producers have not imported feedstock.
- uuu. All the entities forming value chain of SABIC Group barring Itochu Corp which has traded a small volume has participated in the investigation.
- vvv. SABIC India has not imported any goods exported by SABIC and is not involved with any activities in relation to importation or sales of the subject goods.
- www. For the calculation of export price, no evidence relating to the adjustments other than ocean freight is included in the petition.

F.2. Submissions made by the domestic industry

42. The following submissions have been made by the domestic industry with regard to determination of normal value, export price and dumping margin:
- a. There exists a particular market situation in Saudi Arabia and Kuwait, with regard to the prices of MEG as well as the prices of raw materials and utilities.
 - b. Due to the existence of government-owned producers of MEG and input suppliers, the selling price and cost of production of MEG in Saudi Arabia and Kuwait are suppressed and are not in the ordinary course of trade.
 - c. The domestic industry is not precluded from making additional submissions regarding particular market situation post filing an application.
 - d. Since the domestic industry had claimed particular market situation prior to initiation, the producers should have provided data relating to third country exports in their response.
 - e. Due to the significant presence of the government-owned or government-controlled producers in Saudi Arabia and Kuwait, the domestic selling price of MEG is distorted and prevents proper comparison with the export price.
 - f. All responding producers / exporters from Saudi Arabia are held by SABIC, which has been wholly acquired by Saudi Aramco, a state-owned company.
 - g. All responding producers from Kuwait are held by Petrochemical Industries Company, which in turn is a subsidiary of Kuwait Petroleum Corporation, a state-owned company.
 - h. Contrary to claims by other interested parties, Equate and TKOC are nothing but the manufacturing arms of Petrochemical Industries Company K.S.C. and have been listed as a part of the Core Business of PIC on its website.
 - i. Existence of government control over prices itself implies that sales in that market are not suitable for determining prices, as per the Manual of Operating Procedures.
 - j. Reference to regulation of prices of products by Government of India is irrelevant to the present investigation.
 - k. While the domestic industry has relied on factors provided in the Canadian, EU, UK and Australian law to establish the existence of a particular market situation, the other interested parties have failed to show how such factors do not lead to conclusion of existence of particular market situation in the present case.
 - l. Contrary to the claims of the interested parties, in the investigation concerning certain corrosion resistant steel flat products from Korea RP, the US DOC specifically addressed the involvement of government in providing subsidies and regulation of electricity price which led to existence of particular market situation.
 - m. The term "particular market situation" includes the existence of distortions in input prices due to various reasons, as held by the WTO Panel in Australia – A4 Copy Paper and as reflected in practices of authorities in Canada, EU and UK.
 - n. As evident from the Report of the Working Party on the Accession of Kingdom of Saudi Arabia to the WTO, the domestic prices of ethane, propane, butane and natural gas have been subject to price and profit control, and are fixed by Saudi Arabian Council of Ministers. Despite increase in price of ethane and propane in

2016 by Saudi Arabia, these prices continue to be subject to regulation as per the HSBC Global Research report, Trade Policy Review of Saudi Arabia and annual report of Saudi Aramco.

- o. Absence of comments with regards to particular market situation in the Report on Accession Protocol of Saudi Arabia cannot supersede the rights of WTO members under the Anti-dumping Agreement.
- p. The domestic industry has not claimed that regulation of feedstock prices is inconsistent with WTO rules, but such consistency does not preclude consideration of the issue as particular market situation.
- q. As per its annual report, where Saudi Aramco sells the inputs domestically at a price below the corresponding equalization prices, it is entitled to compensation from the Government for an amount equal to the cost of the revenues directly forgone due to compliance with the Kingdom's current pricing mandates.
- r. The GCC market being one unified market without internal tariff barriers, the distorted prices prevailing in Saudi Arabia are likely to have influenced prices prevailing in Kuwait as well.
- s. Other interested parties must establish their claim with evidence that prices in GCC are freely determined by market and are at arm's length.
- t. The European Commission in the investigation concerning MEG from Saudi Arabia and USA remained sub silentio on issues regarding input price distortions and particular market situation, which were not raised before it and thus, such findings cannot be relied upon.
- u. The WTO Panel has affirmed that even if a certain situation constitutes a subsidy, it can nevertheless be considered within the scope of particular market situation.
- v. Ethane is not feedstock or raw material for clear float glass, normal butanol or pentaerythritol and absence of findings of Authority with regard to particular market situation in such investigations is irrelevant to the present case. Further, determination regarding particular market situation and whether it presents proper comparison, depends on case-to-case basis, as held by WTO Panel in Australia A-4 Copy Paper.
- w. Distortion in the prices of the inputs has resulted in the distortion of the cost of production and domestic prices, but has not impacted the export prices which are in competition with other global producers.
- x. Availability of feedstock on a non-discriminatory basis is irrelevant for determination of particular market situation under the Anti-dumping Agreement.
- y. Contrary to the arguments of other interested parties, even where the same inputs are used for both domestic and exported goods, the distorted inputs prices are likely to impact domestic and export prices differently depending on the prevailing market conditions, as observed by the WTO Panel in Australia – A4 Copy Paper.
- z. The conditions of competition prevailing in Saudi Arabia and Kuwait are different from India since there is no demand for MEG in Saudi Arabia and Kuwait, there are no imports of MEG and all producers are directly / indirectly government-

owned or controlled. On the other hand, there is high demand of MEG in India, there are significant imports and there are two privately owned major producers in the country.

- aa. The cost of production for producers in Saudi Arabia and Kuwait has remained unchanged while the price of exports to India declined, indicating absence of any relationship between cost and price.
- bb. Contrary to the claims made by other interested parties, prices of inputs in Saudi Arabia are not lower due to any natural advantage or abundant supply but due to price regulations and compensation received by Saudi Aramco from the government.
- cc. Despite having high reserves of natural gas, price of ethane in USA is determined as per market forces and has fluctuated significantly during period of investigation.
- dd. The domestic industry has provided information regarding price of exports of ethylene, propane and butane from subject countries and price of ethane prevailing in USA, which are all subject to same natural regional advantages as claimed by the interested parties with reference to domestic prices of such inputs. However, despite the regional advantages, the prices in USA are not low or regulated.
- ee. With regards to the purchases from affiliates, the WTO Panel in US – OCTG held that the Authority can reject the price of raw materials purchased from an affiliate which is not at arm's length.
- ff. It has been the consistent practice of the Authority to determine normal value based on facts available where the exporters failed to establish purchase of raw material from related party at arm's length. Other jurisdictions also consider whether any input procured from affiliate are valued at arm's length basis.
- gg. Since ethane is not imported into Saudi Arabia and is only supplied by Saudi Aramco in the country and all sales by Saudi Aramco to unrelated parties are also at regulated prices, such prices cannot be used to determine the arm's length price for purchase of ethane.
- hh. While the Authority is required to normally determine cost of production based on records kept by the producers if the requirements of Article 2.2.1.1 are met, costs other than records can still be relied upon in certain cases, as held by the WTO Panel in Australia – A4 Copy Paper. Similar approach was adopted by the Authority in the case of Aluminium Foil from China PR, Indonesia, Malaysia and Thailand.
- ii. Authorities in Canada, Australia and USA also consider costs other than costs kept in records for determination of cost of production.
- jj. Since the responding producers have concealed relevant information regarding the particular market situation in their countries, the Authority can determine normal value on the basis of facts available, as held by the Supreme Court in DA vs. Haldor Topsoe.

- kk. The decisions of Ukraine – Ammonium Nitrate and EU – Cost Adjustment Methodologies do not prevent rejection of domestic selling price in case of particular market situation or rejection of cost in case of input price distortions.
- ll. Since the particular market situation prevailing in Saudi Arabia and Kuwait affects the prices of utilities and raw materials alike, the price of both must be rejected in determination of cost of production.
- mm. In addition to particular market situation for prices of inputs, all responding producers have purchased inputs from affiliated parties and thus, the cost of production of MEG for producers in Saudi Arabia and Kuwait should be adjusted for the market price of ethylene and natural gas at international prices.
- nn. There is a need for adjustment of price of ethylene since it is not possible to address all distortions even if undistorted cost of ethane, propane, butane and natural gas are considered.
- oo. Contrary to the argument of other interested parties, the Authority can consider out-of-country prices for determination of cost of production, after reasonably adjusting the same to represent the cost of production in the country, as observed by the WTO Appellate Body in EU – Biodiesel.
- pp. Considering the significant investment in ethylene cracker and major value addition involved in the production of ethylene from ethane, the full cost of ethylene, including interest and depreciation, must be considered.
- qq. Contrary to the claims of the other interested parties, the domestic industry circulated the non-confidential version of the petition along with the addendum, to all parties reflecting the change in dumping margin, pursuant to submissions regarding existence of particular market situation in Saudi Arabia and Kuwait.
- rr. Evidence regarding the domestic selling price in Saudi Arabia is not relevant since such price must be rejected in view of the particular market situation.
- ss. As held by WTO Panel in US – Softwood Lumber, the domestic industry is only required to provide information reasonably available to it, which was shared in the petition itself,
- tt. The domestic industry submitted normal value based on the information reasonably available to it in accordance with Article 5.2 of the Anti-dumping Agreement.
- uu. Such prices are based on the information available on Trade Map, which collects its data from official sources such as Central Statistical Bureau, Kuwait, UN COMTRADE and Central Department of Statistics & Information, Saudi Arabia and is, therefore, reliable.
- vv. Normal value can be determined based on cost of production of the domestic industry at the stage of initiation, as held by the Tribunal in Automotive Tyre Manufacturer’s Association vs. Designated Authority.
- ww. Individual dumping margin should not be granted to producers whose related / unrelated exporters have not participated in the present investigation.
- xx. Mitsubishi International Corporation, which has sold the goods produced by Nan Ya Plastic, America to Mitsubishi Corporation, has not participated in the

- investigation. In absence of participation by Mitsubishi International Corporation, the Authority would be unable to determine profitability of final exports to India.
- yy. As per the Manual of Operating Procedures, every unrelated intermediary involved in the physical movement or financial transaction of the goods is required to participate in an investigation.
 - zz. It is required to be examined if an exporter / trader has exported the goods at profit or loss, and in the absence of participation by such trader, the response filed by the producers should be rejected, as in the case of HFC Component R-32 from China PR.
 - aaa. Itochu Corporation, which has exported the goods produced by Eastern Petrochemical Company has not participated in the investigation.
 - bbb. MEGlobal Americas Inc., which is a related producer of Equate Petrochemical Company and The Kuwait Olefins Company, has not participated in the investigation.
 - ccc. Considering the various intermediaries involved in exporting the goods to India from Saudi Arabia and Kuwait, the export price in the present case should be determined after considering lower of exporter's sale price or importer's purchase price, similar to practice of Canadian Authority.
 - ddd. The export price must be verified from documents sought from the Customs Authorities as is the practice of authorities in European Union and GCC.
 - eee. SABIC India Private Limited has provided marketing services to SABIC. The expenses incurred by the marketing entity should be adjusted in the determination of export price.
 - fff. The domestic industry claimed adjustments to export price as per the consistent practice of the Authority.
 - ggg. Contrary to the claims of the other interested parties, even if the exporters in Kuwait are located near their own ports and own the pipelines, they would still incur certain post ex-factory expenses for administration and maintenance, which are required to be adjusted.
 - hhh. RIL had previously imported goods from Kuwait only on CFR basis and is not aware of where the exporters incurred any inland freight or port expenses.

F.3. Examination by the Authority

43. 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 destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the

particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –

- (a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
- (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

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

44. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have co-operated in this investigation by filing the questionnaire response:
- a. Equate Petrochemical Company, Kuwait
 - b. The Kuwait Olfeins Compnay KSCC (TKOC), Kuwait
 - c. Arabian Petrochemical Company (Petrokemya), Saudi Arabia
 - d. Eastern Petrochemical Company (SHARQ), Saudi Arabia
 - e. Jubail United Petrochemical Company (United), Saudi Arabia
 - f. Saudi Basic Industries Corporation (SABIC), Saudi Arabia
 - g. Saudi Kayan Petrochemical Company, Saudi Arabia
 - h. Saudi Yanbu Petrochemical Company (Yanpet), Saudi Arabia
 - i. Rabigh Refining and Petrochemical Company, Saudi Arabia
 - j. Yanbu National Petrochemical Company (Yansab), Saudi Arabia
 - k. Nan Ya Plastics Corporation, America, USA
 - l. Nan Ya Plastics Corporation, Texas, USA
 - m. Mitsubishi Corporation, Japan
 - n. SPDC Limited, Japan
 - o. ExxonMobil Chemical Asia Pacific, Singapore
 - p. Mitsubishi Chemical Asia Pacific Pte. Limited, Singapore
 - q. SABIC Asia Pacific Pte. Limited, Singapore
 - r. MEGlobal International FZE, UAE

45. The normal value and export price for all producers / exporters from the subject countries have been determined as below.
46. The domestic industry has alleged that there exists a particular market situation with regard to the domestic selling price of MEG in Saudi Arabia and Kuwait, based on the fact that all producers of MEG in Saudi Arabia and Kuwait are owned or controlled by the governments in the respective countries. In this regard, the domestic industry has submitted evidence to demonstrate that all responding producers from Saudi Arabia are owned or controlled by Saudi Aramco, a state-owned entity, through SABIC. Further the domestic industry has also provided evidence to establish that the responding producers from Kuwait are owned or controlled by Kuwait Petroleum Corporation, a state-owned company, through Petrochemical Industries Company.
47. In addition, the domestic industry has also alleged that there exists a particular market situation with regard to price of ethane, propane, natural gas, butane, etc. in Saudi Arabia as the price of such inputs are distorted due to government intervention. In this regard, the domestic industry has relied upon price controls in Saudi Arabia over the supply of inputs.
48. The other interested parties have contended that the factors highlighted by the domestic industry do not permit and warrant any adjustment to the cost of production. It has been emphasized that the inputs are available to all producers on a non-discriminatory basis in Saudi Arabia. The opposing interested parties have further cited the Panel reports in Australia –A4 Copy Paper to claim that particular market situation can be concluded only when the particular market situation is such that it prevents a proper comparison of domestic sales with the export price.
49. Reference has also been made to decisions in the case of European Union – Cost Adjustment Methodologies, European Union – Biodiesel and Ukraine – Ammonium Nitrate to claim that no adjustment can be made to the cost of production, as the records of the responding producers are kept in accordance with the generally accepted accounting principles of the subject countries, and reasonably reflect the cost associated with the production and sale of the subject goods. It has also been highlighted that the Designated Authority is required to arrive at the cost of production in the country of origin.
50. In order to address the issue, the Authority finds it necessary to examine the factual aspects involved having regard to the legal principles governing the issue. The Authority notes that as per the provisions of Section 9A(1)(c) of the Customs Tariff Act, 1975, normal value is required to be determined based on the comparable price, in the ordinary course of trade, of the like article, when destined for consumption in the exporting

country. However, when because of a particular market situation, such sales do not permit a proper comparison, the normal value may be determined on alternative basis.

“(c) “normal value”, in relation to an article, means -

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

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

51. The first step thus is to examine whether a particular market situation exists in a particular country and if so, the next step is to examine whether the effect of the particular market situation is such that it does not permit a proper comparison between the domestic selling price and the export price. The Authority notes that in the present case, the evidence on record shows that the prices of inputs such as ethane, propane, butane, natural gas, etc. are fixed by the Government of Saudi Arabia. The supply of these inputs in the country is controlled by Saudi Aramco, a government owned company. Pursuant to a series of Council of Ministers Resolutions, the Kingdom has established regulated prices for domestic sales of certain hydrocarbons, including ethane. The price of ethane has been regulated at USD 1.75 per MMBtu, while the price of natural gas is fixed at USD 1.25 per MMBtu. The prices of propane and butane have been set at a discount of 20% to the FOB Japan price. The other interested parties have also not disputed that the prices of the inputs are set in this manner. However, it is noted that the Government ownership per se does not establish particular market situation.

52. With regard to the distortion of input prices, the interested parties have contended that that after reforms in 2015-16, the prices of ethane are comparable to the prices in other oil rich countries. It has also been contended that the prices in Saudi Arabia are lower due to natural advantages. The Authority, however, notes that the very fact that prices of ethane and other inputs are regulated implies that they are not determined by free market forces. The domestic industry has relied on the Trade Policy Review of Saudi Arabia and has stated that Saudi Aramco, a government-owned entity, is entitled to compensation from the Government if it sells crude oil and certain refined products domestically at

regulated price, equal to the cost of the revenue forgone by Saudi Aramco by complying with the Government's pricing mandates. The Authority notes that once the prices are regulated by the Government, it cannot be considered that the prices are lower due to natural advantages or competitively set.

53. Therefore, the Authority concludes that the prices of inputs such as ethane, propane, butane, natural gas etc. in Saudi Arabia are influenced by government intervention and to this extent particular market situation exists in Saudi Arabia. The Authority also notes the decision of the WTO Panel in the case of Australia – Anti-Dumping Measures on A4 Copy Paper. The Panel has specifically considered whether input price distortion can be construed as a particular market situation. The Panel noted that “capable of preventing a proper comparison” is not a necessary qualification for a situation to constitute “particular market situation”.

“7.27 In our assessment, the phrases "particular market situation" and "permit a proper comparison" function together to establish a condition for disregarding domestic market sales as the basis for normal value. Specifically, that domestic sales "do not permit a proper comparison" must be "because of the particular market situation". If domestic sales do permit a proper comparison, then they cannot be disregarded as the basis for normal value, regardless of the existence of the particular market situation and its effects, whatever those may be. We find no functional purpose is served by incorporating into the meaning of "particular market situation" part of the function that will necessarily be served by the terms "because of" and "not permit a proper comparison". Accordingly, we find that "capable of preventing a proper comparison" is not a necessary qualification for a situation to constitute the "particular market situation". Indeed, incorporating such a meaning into the term "particular market situation" would alter the functioning of this provision. Thus, we find that the term "particular market situation" does not require or contemplate an analysis relating to the capability of causing domestic sales to not permit a proper comparison in the abstract. Rather, the terms "because of" and "not permit a proper comparison" in Article 2.2 already properly and adequately fulfil this function.

7.28 Turning to the specific issue posited by Indonesia of a low-priced input used identically to produce merchandise for the domestic and export markets, we are again unpersuaded that a categorical disqualification from constituting the “particular market situation” can be sustained as a matter of interpretation. We understand that Indonesia is arguing that a situation that equally affects the cost of producing merchandise for sale in domestic and export markets will necessarily equally affect the sales prices in both markets and will, therefore, permit a proper comparison between domestic market sales and export sales. First, we find no legitimate interpretative basis for incorporating this proposed meaning into the term “particular market situation”, particularly where such considerations are more appropriately examined in relation to

the terms “because of” and “permit a proper comparison” as suggested by the above analysis. Second, we do not accept as a given that an equal impact on cost of merchandise produced for domestic and export markets would necessarily affect sales prices in both markets equally such that a proper comparison between domestic sales and export sales would not be prevented. We consider that these assertions are not appropriate elements for an interpretation of the term “particular market situation”, but rather are better suited to an analysis of whether domestic sales do not permit a proper comparison because of a particular market situation identified by an investigating authority. We will return to these points in our examination of Indonesia’s arguments relating to the meaning of the term “permit a proper comparison”

54. The Authority also notes the decision of the WTO Panel in the case of Australia – Anti-Dumping Measures on A4 Copy Paper quoted below on the issue that input price distortion can be considered as a particular market situation, even if it has some effect on the export price.

“7.57 On the basis of the above findings, we determine that Indonesia has not demonstrated that the ADC acted inconsistently with Australia’s obligations under Article 2.2 of the Anti-Dumping Agreement when it found that a “particular market situation” existed in the Indonesian domestic market for A4 copy paper. Indonesia’s arguments have not persuaded us that a domestic market situation resulting in a lower cost for an input used to produce both exported and domestically sold product is necessarily excluded from constituting “the particular market situation”. Nor are we persuaded that, as a general proposition, any situation which has or may have some impact on export sales in addition to domestic market sales is necessarily excluded from constituting “the particular market situation” because we consider that, in at least some cases, differences in the impact on domestic and export sales could prevent a proper comparison. Finally, we are also not persuaded that “the particular market situation” referenced in this provision necessarily excludes any situation that arises from a subsidy or other governmental action.”

55. The Authority further takes note of the fact that no evidence has been placed on record to substantiate that raw material prices are fixed or regulated by the Government in Kuwait. Therefore, the Authority concludes that there does not exist a particular market situation in Kuwait.
56. After reaching the conclusion that the prices of inputs such as ethane, propane, butane, natural gas etc. in Saudi Arabia are influenced by government intervention and to this extent particular market situation exists in Saudi Arabia, the next issue to be examined is whether the effect of the particular market situation is such that it does not permit a proper comparison between the domestic selling price and the export price.

57. In this regard, the Panel in Australia Copy Paper has also observed as under.

“7.73. Where a "particular market situation" is found to exist, the investigating authority must examine whether "a proper comparison" of the domestic and the export price is permitted or not. We consider that the "proper comparison" language calls for an assessment in respect of the comparison of domestic and export prices.

7.74. The ordinary meaning of the term "proper" is "suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; ... apt, fitting; correct, right". The term "comparison" can be understood as "the action, or an act, of comparing, or noting the similarities and differences of two or more things". The function of the "permit a proper comparison" test is to determine whether the domestic price can or cannot be used as a basis for comparison with the export price to identify the existence of dumping. It is implied here in Article 2.2 that the words "a proper comparison" refer to the comparison between the domestic price and the export price. Thus, the purpose of an investigating authority's examination under the second clause of Article 2.2 of the Anti-Dumping Agreement is to determine whether domestic sales of the like product in the ordinary course of trade do not permit a proper comparison between the export price and the domestic sales price because of the particular market situation or the low volume.

7.75. While the proper comparison in Article 2.2 refers to the comparison between the domestic and export prices, a purely numerical comparison between the two prices may not reveal anything about whether the domestic price can be properly compared with the export price. Rather, it is necessary to conduct a qualitative comparison of the domestic and export prices. The phrase "because of the particular market situation" makes clear that the qualitative assessment of whether the domestic and export prices can be properly compared should focus on how the particular market situation affects that comparison. We therefore consider that the "proper comparison" language calls for an assessment of the relative effect of the particular market situation on domestic and export prices. We understand that, in certain circumstances, as a result of this assessment, the investigating authority may conclude that the particular market situation has no effect on the export prices.

7.76. Turning to the assessment of whether "a proper comparison" is not permitted because of the particular market situation, we note that the focus of the analysis is on whether the effect of the particular market situation is such that a proper comparison between domestic sales prices and export prices under examination is not permitted. In other words, the investigating authority must examine the domestic sales in order to determine whether a proper comparison between the two prices is permitted in spite of the effect of the particular market situation. The point is to determine if there is a comparable domestic price (i.e. if there is "the comparable price, in the ordinary course

of trade, for the like product when destined for consumption in the exporting country" in the sense of GATT 1994 Article VI:1(b) and Article 2.1 of the Anti-Dumping Agreement). That determination is fact-specific and should be made on a case-by-case basis by the investigating authority assessing the effect of particular market situation on the domestic price in relation to the effect on the export price, if any. This relative assessment is necessary because, as we explain in the following subsection, while a particular market situation may have an effect on both domestic and export prices, it does not follow that the impact on domestic and export prices will be the same. If the investigating authority finds that because of a particular market situation a proper comparison of the domestic price and the export price is not permitted, it is required to give a reasoned and adequate explanation of its conclusion."

58. The Authority has determined existence of particular market situation in Saudi Arabia due to lower price of inputs arising out of government intervention. The Authority has examined all the available evidence on record regarding the cost of the PUC, the domestic selling price and the export price of the PUC. The Authority notes that particular market situation due to lower prices of raw material will result in lower domestic selling price and also lower export price unless proved to the contrary. If raw material prices are lower, it will result in lower selling price of the final product generally, irrespective of whether such final product is meant for domestic market or export market unless proved otherwise. In the present case, the Authority notes that out of the 6 producers of PUC in SABIC Group who have participated in this investigation, normal value has been determined for 5 producers based on their export price to an appropriate third country and not based on domestic sales price in Saudi Arabia. Therefore, the issue of particular market situation affecting the domestic selling and thereby distorting the comparison between domestic selling price and export price for the purpose of determination of dumping margin is not of much relevance. Moreover, the Authority also notes that there is no sufficient evidence to conclude that the particular market situation prevailing in Saudi Arabia has specifically impacted domestic selling price of the product under consideration for one producer in SABIC Group for whom normal value has been determined based on domestic selling price in such a manner that a proper comparison between domestic selling price and export price is not permitted.

59. Thus, the Authority concludes that that there is no sufficient evidence on record to reject actual cost of raw material and domestic selling price of producers/exporters from Saudi Arabia for determining the dumping margin.

G.3.1. Determination of normal value and export price

Kuwait

EQUATE Petrochemical Company K.S.C.C. (“EQUATE”), The Kuwait Olefins Company K.S.C.C. (“TKOC”) and MEGlobal International FZE (“MEGlobal”) (collectively referred to as “EQUATE Group”)

Normal Value

60. EQUATE Petrochemical Company K.S.C.C. (“EQUATE”) and The Kuwait Olefins Company K.S.C.C. (“TKOC”) are the producers of the PUC in Kuwait. EQUATE and TKOC have exported the PUC to India and other third countries through a related exporter, MEGlobal International FZE (“MEGlobal”), based in United Arab Emirates. It has been noted by the Authority that EQUATE and TKOC have not made any sales of the PUC in the domestic market during the POI. So, it is not possible to determine the normal value on the basis of domestic sales in Kuwait.
61. Explanation (c) to Section 9A(1) of the Customs Tariff Act, 1975, provides as follows:

“Normal Value, in relation to an article, means –

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

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

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

62. As there are insignificant (less than 5% of export quantity to India) sale of the PUC by EQUATE Group in the domestic market, the Authority has proceeded to determine the normal value based on the other permissible method provided under the Custom Tariff Act. Accordingly, both producers were requested to provide the transaction-wise details of their export sales to third countries for selection of an appropriate third country for determination of normal value as per the clause (ii)(a) of Explanation (c) to Section 9A(1) of Customs Tariff Act. The transaction-wise data of exports to third countries, provided by the responding producers, has been examined for selection of an appropriate third country. In the absence of any specific guidelines in this regard, either in the WTO Anti-Dumping Agreement or in the Customs Tariff Act or in the Anti-Dumping Rules, state of product development in the said country and volume of imports, have been taken as the guiding criteria for selection of the appropriate third country. It has been noted that the largest volume of exports by EQUATE Group are to China PR. The Authority does not consider China PR as an appropriate third country because (i) China PR does not operate under market economy conditions and (ii) Exports volumes to China PR are significantly higher than export volumes to India. The Authority notes that export volumes to Pakistan are in the closest range compared with the export volumes to India during the POI. Therefore, Pakistan has been selected as the appropriate third country and EQUATE Group's exports to Pakistan have been considered for determination of normal value for the EQUATE Group.
63. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit-making export sales transactions to Pakistan with reference to the cost of production of the subject goods. The Authority has considered the sales price of MEGlobal and made appropriate adjustments on account of post-factory expenses, SGA expenses and other items to arrive at ex-factory prices at the producer's level. Upon conducting the ordinary course of trade test, Authority notes that more than 80% of the transactions concerning exports to Pakistan are profitable. Therefore, the Authority has considered all export transactions made to Pakistan during the POI for determination of the normal value.
64. EQUATE Group has claimed adjustments on account of shipping cost, commission, credit cost, bank charges, and credit insurance. The Authority has accepted all the adjustments claimed by EQUATE Group. The normal value at the ex-factory level for EQUATE Group has been determined accordingly, and the same is shown in the Dumping Margin Table below.

Export Price

65. The Authority notes that EQUATE Group has exported a total quantity of *** MT of the PUC to India during the POI originating in Kuwait through the following trade channels:

Trade Channel	Quantity	% Share of total exports	Status of the trade channel
EQUATE/TKOC → MEGlobal → Customers in India	***	***	Cooperating
EQUATE/TKOC → MEGlobal → Mitsubishi Corporation → Customers in India	***	***	Cooperating
EQUATE/TKOC → MEGlobal → Global Trade well → Customers in India	***	***	Non-Cooperating
EQUATE/TKOC → MEGlobal → CPF Packaging → Customers in India	***	***	Non-Cooperating
EQUATE/TKOC → MEGlobal → Samika Global → Customers in India	***	***	Non-Cooperating
Total	***		

66. The Authority notes that the companies involved in more than ***% of the total exports to India have provided relevant information and are cooperating before the Authority. The information provided by EQUATE Group has been considered by the Authority for determining the export price. EQUATE Group claimed adjustments on account of shipping cost, credit cost, and bank charges. In addition, the Authority also made adjustments for SGA expenses and profit (if applicable) of MEGlobal to arrive at the ex-factory export price at producer's level.
67. With respect to the exports made to India for which the complete export chain has not participated before the Authority, the Authority has determined the export price on the basis of the facts available. Accordingly, the weighted average export price for entire exports to India by EQUATE Group has been determined, and the same is shown in the dumping margin table below.

All other Producers from Kuwait

68. For all other non-cooperating producers in Kuwait, normal value, export price and dumping margin have been determined based on facts available taking into account the data of the cooperating producer and the same is shown in the dumping margin table below.

Saudi Arabia

Arabian Petrochemical Company (PETROKEMYA), Eastern Petrochemical Company (SHARQ), Jubail United Petrochemical Company (UNITED), Saudi Kayan Petrochemical Company (SAUDI KAYAN), Saudi Yanbu Petrochemical Company (YANPET) and Yanbu National Petrochemical Company (YANSAB) [collectively referred as “SABIC Group Producers”] along with related traders, Saudi Basic Industries Corporation (SABIC) and SABIC Asia Pacific Pte. Ltd (SAPPL)

Normal Value

69. Arabian Petrochemical Company (PETROKEMYA), Eastern Petrochemical Company (SHARQ), Jubail United Petrochemical Company (UNITED), Saudi Kayan Petrochemical Company (SAUDI KAYAN), Saudi Yanbu Petrochemical Company (YANPET) and Yanbu National Petrochemical Company (YANSAB) are related producers of the PUC in Saudi Arabia within the SABIC Group. It is noted by the Authority that during the POI, only SHARQ and YANPET have made sales of the PUC in the domestic market of Saudi Arabia. All sales in the domestic market were made to related trader, Saudi Basic Industries Corporation (SABIC), who in turn sold the subject goods to unrelated domestic customers. Therefore, the Authority has proceeded to determine the normal value for SHARQ and YANPET based on their domestic sales of the PUC during the POI.
70. The Authority notes that the domestic sales of SHARQ and YANPET are in sufficient volume when compared with exports to India. The Authority has conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of sales of the subject goods for SHARQ and YANPET. The Authority examined whether the profit-making transactions are more than 80% or not. In the present case, it is noted that more than 80% of the domestic sales of YANPET are profitable and hence all the domestic sales of YANPET have been considered to determine the normal value. In case of SHARQ, there are no profitable sales. So, it is not possible to determine the normal value for SHARQ on the basis of its domestic sales.
71. Explanation (c) to Section 9A(1) of the Customs Tariff Act, 1975, provides as follows:

“Normal Value, in relation to an article, means –

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(b) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

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

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

72. As there are no domestic sales of the PUC by PETROKEMYA, UNITED, SAUDI KAYAN, YANSAB and no profitable domestic sales by SHARQ, the Authority has proceeded to determine the normal value based on the other permissible methods provided under the Custom Tariff Act. Accordingly, these five producers were requested to provide the transaction-wise details of their export sales to third countries for selection of an appropriate third country for determination of normal value as per the clause (ii)(a) of Explanation (c) to Section 9A(1) of the Customs Tariff Act. The transaction-wise data of exports to third countries, provided by these five producers, has been examined for selection of an appropriate third country. In the absence of any specific guidelines in this regard, either in the WTO Anti-Dumping Agreement or in the Customs Tariff Act or in the Anti-Dumping Rules, state of product development in the said country and volume of imports, have been taken as the guiding criteria for selection of the appropriate third country. The Authority has considered exports to third countries for all the five producers taken together for ascertaining the appropriate third country. It has been noted that the largest volume of exports by these producers are to China PR. The Authority does not consider China PR as an appropriate third country because (i) China PR does not operate under market economy conditions and (ii) Export volumes to China PR are significantly higher than export volumes to India. The Authority notes that export volumes of these

producers taken together to Indonesia based on information provided by SABIC are in the closest range compared with the export volumes to India during the POI. Therefore, Indonesia has been selected as the appropriate third country and exports to Indonesia made by PETROKEMYA, UNITED and SAUDI KAYAN have been considered for determination of Normal Value for these three producers. It is noted the YANSAB and SHARQ have not exported the PUC to Indonesia during the POI.

73. To determine the normal value for PETROKEMYA, UNITED and SAUDI KAYAN, the Authority conducted the ordinary course of trade test to determine profit making export sales transactions to Indonesia with reference to the cost of sales of the subject goods. If profit making transactions are more than 80%, then the Authority has considered all the export transactions to Indonesia for the determination of the normal value and in cases, where profitable transactions are less than 80%, only profitable export sales transactions to Indonesia have been taken into consideration for the determination of the normal value.
74. It is noted that UNITED's profit making transactions to Indonesia are more than 80% and PETROKEMYA's & SAUDI KAYAN's profit making transactions to Indonesia are less than 80%. Accordingly, Authority has considered all the export transactions to Indonesia for UNITED and only profit-making export transaction to Indonesia for PETROKEMYA and SAUDI KAYAN for determination of normal value.
75. As regard other two producers, YANSAB and SHARQ, the Authority has selected Turkey as the appropriate third country as both these producers have not made any exports to Indonesia during the POI and exports to Turkey are in the closest range compared with the export volumes to India during the POI. It is noted that SHARQ's and YANSAB's profit making transactions to Turkey are more than 80%. Accordingly, Authority has considered all the export transactions to Turkey for SHARQ and YANSAB for determination of normal value.
76. All the producers have claimed adjustments on account of logistics expenses and credit cost. The Authority has accepted all the adjustments claimed by the producers. The normal value at the ex-factory level for the above-mentioned producers has been determined accordingly, and the same is shown in the Dumping Margin Table below.

Export Price

77. As per the information filed by the responding producers, the Authority notes that during the POI, PETROKEMYA, SHARQ, UNITED, SAUDI KAYAN and YANPET have exported the subject goods to India through related traders SABIC, SPDC Ltd ("SPDC") and ExxonMobil Chemical Asia Pacific ("Exxon Mobil"). YANSAB has not made any exports of the subject goods to India during the POI. SABIC has further resold the subject

goods to another related trader SABIC Asia Pacific Pte. Ltd (“SAPPL”), who in turn sold the subject goods to unrelated customers in India. SPDC and Exxon Mobil have further resold the subject goods to Mitsubishi Chemical Asia Pacific Pte Ltd (“MCAP”) and Mitsubishi Corporation, who have finally sold to related and unrelated Indian Customers.

78. It was noted by the Authority that SABIC procures orders from customers and directs producers to effect delivery. Producers raise an invoice on SABIC at a provisional price. SABIC raises an invoice on SAPPL and SAPPL raises invoice on final customer in India. Modifications to price, after sales, are adjusted through debit or credit notes. SABIC deducts a marketing fee and all delivery related expenses from the final price charged to the customer and the balance amount is paid to the producers. Producers receive the net back payment from SABIC after the credit period and also incur certain expenses. It was examined whether marketing fee charged by SABIC and delivery related expenses retained by SABIC are sufficient to cover all expenses and provide reasonable profit. Similar arrangement is followed for exports made through SPDC and Exxon Mobil. It was noted that SABIC has incurred a loss on exports of subject goods to India manufactured by SAUDI KAYAN and SHARQ. The producers have claimed adjustments on account of inland freight (wherever applicable), handling and credit cost from the net back received from SABIC, SPDC and Exxon Mobil. The Authority has allowed the adjustments claimed by the producers and also made an additional adjustment for the losses incurred by SABIC (with respect to subject goods manufactured by SAUDI KAYAN and SHARQ) to arrive at the net ex-factory export price for the producers. Accordingly, the weighted average export price for entire exports to India by SABIC Group producers has been determined, and the same is shown in the dumping margin table below.

Rabigh Refining & Petrochemical Company (“Petro Rabigh”)

Normal Value, Export Price and Dumping Margin for Petro Rabigh

79. From the response filed by Petro Rabigh, the Authority notes that Petro Rabigh is a producer of MEG in Saudi Arabia. Petro Rabigh has not made any exports of the PUC to India during the POI. Therefore, the Authority is not in a position to determine individual dumping margin for Petro Rabigh.
80. From the response filed by Petro Rabigh, the Authority notes that Petro Rabigh has also not made sales of the PUC in the domestic market of Saudi Arabia during the POI. However, Petro Rabigh has made exports of the subject goods to third country markets.
81. Petro Rabigh has submitted that even though they have not exported the PUC to India during the POI, they have exported the PUC to India during 2017. It has been claimed by

Petro Rabigh in their submissions filed subsequent to the filing of the questionnaire response that they are related to SABIC. Petro Rabigh has also submitted that dumping margin determined for SABIC Group Producers may be adopted for Petro Rabigh and accordingly the individual anti-dumping duty rate, if any, determined for SABIC Group Producers should be extended to Petro Rabigh as well. The Authority notes that there is no requirement for the Authority to examine the issue regarding the need for extending the anti-dumping duty rate determined for SABIC/SABIC Group producers to Petro Rabigh because the Authority has concluded that there is no injury to the domestic industry and therefore the Authority has not recommended for imposition of anti-dumping duty on import of subject goods.

All other Producers from Saudi Arabia

82. For all other non-cooperating producers from Saudi Arabia, normal value, export price and dumping margin have been determined based on facts available taking into account the data of the cooperating producers and the same is shown in the dumping margin table below.

M/s Nan Ya Plastics Corporation, America (Producer/Exporter), M/s Nan Ya Plastics Corporation, Texas (Producer/Domestic Seller) and M/s Mitsubishi International Corporation (Trader)

Normal Value, Export Price and Dumping Margin

83. Nan Ya Plastics Corporation, America, is a producer and exporter of the subject goods from USA. It is noted by the Authority that during the POI, the company has no domestic sales of the subject goods. It is also observed that Nan Ya Plastics Corporation, Texas, which is a related company of Nan Ya Plastics Corporation, America, is also a producer of the subject goods in USA and during the POI, the company has sold subject goods in the domestic market only.
84. The Authority requested both the companies to provide the necessary documents for verification of the information submitted in their questionnaire response. However, both the companies failed to substantiate cost of production submitted in the exporter questionnaire response during the verification exercise. In view of this, the Authority is unable to accept exporter questionnaire response filed by Nan Ya Plastics Corporation, America and Nan Ya Plastics Corporation, Texas. Accordingly, the Authority determines the normal value, export price and dumping margin for Nan Ya Plastics Corporation, America & Nan Ya Plastics Corporation, Texas and all other non-cooperating producers from USA on the basis of facts available information and the same is indicated in the dumping margin table given below.

Dumping Margin Table

85. The dumping margin determined for producers/exporters from Kuwait, Saudi Arabia and USA is given in the table below:

Producer	Normal Value (USD/MT)	NEP (USD/MT)	DM (USD/MT)	DM %	Range
Kuwait					
EQUATE Petrochemical Company K.S.C.C.	***	***	***	***	0-10
The Kuwait Olefins Company K.S.C.C.	***	***	***	***	0-10
All Others	***	***	***	***	0-10
Saudi Arabia					
Arabian Petrochemical Company	***	***	***	***	10-20
Eastern Petrochemical Company	***	***	***	***	10-20
Jubail United Petrochemical Company	***	***	***	***	10-20
Saudi Kayan Petrochemical Company	***	***	***	***	10-20
Saudi Yanbu Petrochemical Company	***	***	***	***	10-20
Yanbu National Petrochemical Company	***	***	***	***	10-20
All Others	***	***	***	***	10-20
USA					
Any Producer/Exporter	***	***	***	***	10-20

H. ASSESSMENT OF INJURY AND CAUSAL LINK

H.1. Submissions made by the other interested parties

86. The following submissions have been made by the other interested parties with regard to injury and causal link:
- a. The petition filed by the domestic industry lacks sufficient evidence to demonstrate dumping, injury to the domestic industry and causal link between the allegedly dumped imports and injury.

- b. The allegation of “threat of material injury to the applicant” itself provides that there is no current injury to the domestic industry.
- c. In order to establish injury, both the parameters of significant increase in the volume of imports and its adverse impact on the economic parameters of the domestic industry need to be satisfied. However, in the present investigation there is no volume effect which is causing injury to the domestic industry.
- d. A finding of injury can be recorded only where conditions under both paras (ii) and (iv) of Annexure II are met, which is not the case in the present investigation as conditions under both paras are not met.
- e. The word “significant” used in Para (ii) of Annexure – II implies that mere increase in the volume of imports or negligible price undercutting is not sufficient to establish the adverse impact of dumped imports.
- f. The Authority must examine all the factors listed in Article 3.4 of the Anti-Dumping Agreement before arriving at a finding of material injury as held by the Appellate Body and Panel in Thailand – H-Beams. When there is positive movement in a number of factors, a finding of injury would require a compelling explanation from the investigating authorities.
- g. Imports from Saudi Arabia cannot be cumulatively assessed with the imports from USA and Kuwait since there is no evidence of dumping from Saudi Arabia, imports from USA increased, while that from Kuwait and Saudi Arabia declined and import prices from Saudi Arabia did not undercut the domestic prices while import prices from USA and Kuwait did.
- h. Nan Ya Plastics corporation only started exporting MEG to India during 2019-20 and the period of investigation. Further, export by Nan Ya to India decreased by 12% whereas exports to other countries increased by 17%. Further, Nan Ya Plastics Corporation, America is operating at more than 90% capacity during the period of investigation and the domestic industry is operating at 112% during the period of investigation.
- i. The volume of imports in absolute and relative terms has declined in the period of investigation compared to the previous years and the market share of the domestic industry has increased while that of subject imports has declined.
- j. Increase in demand has been captured by Reliance Industries displacing imports from all sources.
- k. The decline in imports cannot be only due to Covid-19, as the decline in imports exceeds the decline in demand and sales of the domestic industry.
- l. The domestic industry has proposed a potential demand analysis which is based on unsubstantiated evidence. It has alleged an expected increase in demand by 6% without any basis.
- m. The imports in relation to demand-supply gap calculated by the domestic industry is based on the assumption that the domestic producers are operating at full capacity and Indian users are buying only domestically produced MEG. Such assumption is

contrary to general economic principles and indicates the protectionist intention of the domestic industry.

- n. As per the original claim of the domestic industry, the imports from Saudi Arabia are not undercutting the prices of the domestic industry and thus, such imports must be excluded from the investigation as per the practice of Authority in Linear alkyl benzene from China, Iran and Qatar.
- o. There is no significant price undercutting by the imports from Kuwait and the domestic industry have themselves submitted that the price undercutting is marginal.
- p. The selling price has moved independently of the landed price and there is no price suppression or depression attributable to the subject imports.
- q. The domestic industry was earning high profits when the price undercutting was high and thus, loss of profits is only due to increase in interest, depreciation and amortizations costs due to setting up of additional capacities.
- r. The applicants have not submitted evidence regarding decline in landed price being more than the decline in price of ethylene.
- s. The performance of the domestic industry has improved with regard to installed capacity, production, capacity utilization, sales and productivity.
- t. The market share of imports from Kuwait has remained stable in the period of investigation compared to the base year while the market share of the domestic industry has increased by 13%.
- u. The domestic industry has acknowledged in its annual report that MEG market has improved.
- v. Inventory have declined in the period of investigation as compared to 2019-20.
- w. The number of employees, wages and productivity of the domestic industry have increased over the injury period, implying no injury with respect to such parameters.
- x. Ability to raise capital investments of the domestic industry has not been impacted as it has been able to expand its capacities
- y. The profitability of the domestic industry has increased significantly during the period of investigation, as compared to the years 2018-19 and 2019-20, which were part of the period of investigation in the previous investigation.
- z. RIL has reported an increase of 52% in prices and 27% in margins for the product after the end of period of investigation.
- aa. The low profitability is on account of high depreciation and amortisation expense, and finance cost.
- bb. Actual cost of production of ethylene must be considered while determining the non-injurious price. Since ethylene is produced captively, the cost of production must be normated.
- cc. Trends of average capital employed does not support such a huge variation in depreciation and amortization expenses.

- dd. The applicants have calculated return on investment as a percentage of 'normative cost of sales for its most recent plants' since the old plants have depreciated, in violation of para 4 (viii) Annexure III, which has led to inflated injury margin.
- ee. The domestic industry has failed to provide the legal basis for their request to consider the production and sales ratio of earlier years for apportionment of the finance cost, discounts, administrative expenses, selling & distribution cost and then normate the costs.
- ff. The contention of the domestic industry that a return on depreciated plants be allowed based on the benchmark of the return allowed on new plant cannot be accepted as Annexure – III provides that revaluation of fixed assets is not to be considered in the calculation of capital employed.
- gg. Consideration of return of 22% for determination of non-injurious price is not appropriate.
- hh. During an era of global recession allowing such a high return to domestic industry is totally incorrect and is never heard of in any sector.
- ii. Merely because DGTR has been adopting 22% return for many years is no ground for claiming reasonability.
- jj. The return of 22% is based on Drug (Prices Control) Order, 1987. However, various factors such as corporate tax rate and rate of interest have changed since then.
- kk. The issue of reasonableness of 22% return on capital employed was examined by Hon'ble CESTAT in the case of Bridge Stone Tyre Manufacturing & others Vs. Designated Authority and in Hyosung Corporation Vs. Designated Authority wherein it was held that adoption of 22% return has coloured the injury determination.
- ll. European Union follows the practice of considering the return earned by domestic industry during the part of the injury period in which dumped imports did not have a negative impact on the domestic industry. In case of EFMA vs. Council, the Court held that the target price should be limited to the profit margin which the industry could reasonably count on in the absence of injury.
- mm. The Authority is required to assess the actual cost of finance incurred by the domestic industry and objectively assess the reasonable rate of interest vis-à-vis the return on capital employed, similar to the practice followed by the European Union.
- nn. Since RIL is a vertically integrated producer, in order to obtain an accurate picture of its actual performance, it is important to assess the overall performance of the entire value chain and allocation of resources across the value chain, as it may have allocated raw material to more profitable products.
- oo. The Authority and the domestic industry are requested to explain the impact on the injury and causal link analysis on the statement made by RIL regarding that they do not have the option of "not producing MEG".

- pp. The domestic industry should clarify whether they transfer captive raw material at market price or cost.
- qq. Due to different production process adopted for manufacturing MEG by India Glycols Limited and Reliance Industries Limited, the injury parameters and injury margin of both the companies cannot be clubbed.
- rr. Allegation of both material injury and threat of material injury cannot be made in the same investigation. In terms of Rule 4 of the Anti-Dumping Rules the Authority shall submit its findings on material injury or threat of material injury. It has been held in *State of Punjab v. Ram Singh Ex-Constable* and in *Indian Medical Association v. UOI*, that the term 'or' cannot be read as 'and' is regarded as disjunctive and independent. Further, the Manual of Operating Practices provides that an allegation of threat of injury can be made when the domestic industry has not suffered injury.
- ss. There is no threat of material injury to the domestic industry as the exporters do not have freely disposable capacity for exports to India and the prices of MEG have significantly increased since the end of period of investigation.
- tt. The claim of the domestic industry that there exists no demand for MEG in Saudi Arabia is contrary to the publicly available information.
- uu. Contrary to the submissions of the applicants, the demand for subject goods in Middle East is lesser than Asia Pacific region as India and China are leading producers of textiles, due to which the Chinese producers are expanding capacities.
- vv. Natural and geographical advantage to any producer cannot be construed as threat to the domestic industry.
- ww. The contention that there are freely disposable capacities in the subject countries and global oversupply is incorrect as the volume of imports has declined while the prices have increased since the end of period of investigation.
- xx. The responding producers in Saudi Arabia are operating at 98% capacity utilization and hence do not have any underutilized capacities.
- yy. While there may be a global overcapacity, the global consumption is also expected to increase, as is evident from the journal relied on by the domestic industry.
- zz. Mere establishment of one of the factors does not lead to determination of threat of material injury.
- aaa. The significant captive consumption of the domestic industry must be taken into account and segregated for the purposes of injury analysis.
- bbb. Share of captively consumed product has increased in the recent period with the acquisition by RIL of Alok Industries, JBF Industries and Subhalakshmi Polyester Limited. RIL now consumes 70% of its production captively, which would further reduce the availability of MEG in the market.
- ccc. The profits are declining due to the exponential increase in the depreciation due to the increase in the capacity enhancement by 28%. The domestic industry has also stated that some of its plants are depreciated.

- ddd. RIL imports ethane, which needs to be compressed for the purpose of transportation, leading to exorbitant transportation costs. The impact of the same should be segregated.
- eee. Domestic industry lost profits in 2018-19 even when price undercutting was negative, implying that import prices have no impact on profitability of RIL.
- fff. Injury suffered by Reliance is self-inflicted since it is importing Ethane by incurring exorbitant freight and insurance costs which puts it in a significant cost disadvantage as compared to Saudi producers who do not have to incur such costs. In addition, the usage of Naptha for production of Ethylene as compared to Ethane also puts it at a significant cost disadvantage as compared to Saudi producers.
- ggg. The domestic industry did not invest enough in requisite infrastructure to store the subject goods, and as a result it is suffering injury. Since the domestic industry is vertically integrated, it can use ethylene for production of other products and is not forced to produce subject goods continuously and sell at lower prices.
- hhh. RIL had a joint venture with Ensign Natural Resources in US for shale gas assets. As per its annual report, the management of RIL has carried out an impairment assessment. It must be ensured that such extraordinary loss is excluded for computation of non-injurious price.
- iii. Injury to RIL is because of the fact that when the country was facing a dearth of oxygen supply for people affected with Covid-19, RIL provided 1000 MT of oxygen, which is a raw material of MEG. Diversion of oxygen affected the profit of MEG due to shortage of raw material.
- jjj. The annual report of RIL shows that its profits declined due to weaker demand of MEG in well-supplied markets.
- kkk. The domestic industry has failed to assess the effects of the significant increase in exports in the period of investigation at low profitability. The annual report for RIL shows that while the demand of MEG in the domestic market declined due to COVID-19, RIL successfully diverted the surplus volume to the export markets.
- lll. The price of crude oil and natural gas directly affect the pricing of the downstream products like ethylene and MEG which is evident from the annual report of RIL and IGL.
- mmm. The export of MEG produced from fossils (Natural gas) cannot be the cause of injury to the bio-MEG producer in India who suffers from its own inherent cost disadvantages.
- nnn. As per annual report of IGL, the increased price gap between green “petrochemicals” and conventional crude based petrochemicals had a direct adverse impact on the business volume of Bio-MEG.
- ooo. IGL has mentioned in its annual report that it is shifting focus to the export market, as one of its key areas of growth.
- ppp. It can be seen from the annual report of IGL, the performance of the domestic industry has declined due to low volume due to COVID-19 and lower price of Bio

- MEG globally. IGL plants in Dehradun and Kashipur were shut down for six months due to the pandemic.
- qqq. There exists no causal link between the volume of imports from Saudi Arabia and alleged injury to the domestic industry as the volume of such imports and market share of imports have declined over the period during which the domestic industry was allegedly injured.
 - rrr. Demand for MEG decreased by 7% in the period of investigation due to the global pandemic which is evident from the annual reports of the domestic industry.
 - sss. Injury suffered by the domestic industry is because of US-China trade war and low crude prices, which is clearly stated in their annual reports.
 - ttt. The performance of the domestic industry in 2019-20 was impacted by volatility in the market, lower price realizations and weak demand, causing an unprecedented slump in the market, as is evident from annual reports of RIL.
 - uuu. Profitability of the domestic industry may also be impacted due to price fluctuation of ethylene and such impact must be examined.
 - vvv. The increase in the average stock of the domestic industry is due to the large MEG set up in China PR which is evident from the annual report of the domestic industry.
 - www. The prices and margins of the domestic industry are based on CFR China spot prices of MEG as published by ICIS or Platts. However, there is an oversupply in the Chinese market, as admitted by the domestic industry.
 - xxx. The domestic industry has remained silent on the significant price increase of MEG in 2021.
 - yyy. The responding producers have sufficient storage capacities and have no need to dump the subject goods in India.
 - zzz. The base year in the present investigation is entirely abnormal as in 2017 China announced a ban on its import of plastic waste, due to which the demand for MEG shot up. This is also acknowledged by RIL in its Annual Report for the year 2017-18. Therefore, using 2017-18 as base year exacerbated how injury is reflected. The base year should be ignored or adjusted, as was done in the investigation concerning imports of Phenol from Thailand and USA.

H.2. Submissions of the domestic industry

87. The following submissions have been made by the domestic industry with regards to injury and causal link.
- a. The domestic industry has been forced to match the prices of the subject imports which have allowed the domestic industry to maintain its volume parameters but have severely impacted its profitability.
 - b. Owing to the manner in which production process is structured, there is a compulsion on the part of the applicant to produce ethylene and thereby MEG.
 - c. MEG can be stored only in specific storage capacities and due to such capacities being limited, the producers are forced to sell the product at available prices.

- d. The producers in the subject countries are also forced to sell MEG due to production chain related to other products, as a result of which they resort to dumping in India to dispose their production while selling at high prices in their own markets.
- e. Price is an important factor for users of MEG and thus producers engage in price competition.
- f. Since MEG is a petrochemical product, it largely operates on pass-through basis. However, the mark-up of landed price over materials cost has declined in the present case, forcing the domestic industry to reduce its prices.
- g. The domestic industry has suffered injury since 2019-20 which has continued in the period of investigation.
- h. The demand for the subject goods increased throughout the injury period but has declined in the period of investigation due to effect of Covid-19 pandemic.
- i. While the volume of imports was high initially, it declined in 2018-19 due to the capacity expansion by the domestic industry. However, the volume of imports increased in 2019-20, but declined again during period of investigation, due to the Covid-19 pandemic.
- j. The volume of imports exceeds the demand supply gap in the country. Further, while the demand-supply gap has reduced over the period, the imports in excess of such gap have increased.
- k. The imports from the subject countries account for 95% of total imports in the period of investigation, while the imports from other countries have declined.
- l. The landed price of the imports has declined significantly and was the lowest during the period of investigation.
- m. The decline in landed price has outpaced the decline in price of ethylene, due to which mark-up of landed price over ethylene has declined over the period.
- n. The subject imports are undercutting the prices of the domestic industry, despite the domestic industry having reduced its prices to compete with the imports.
- o. With reference to claim regarding change in the price undercutting, minor linking error regarding price undercutting for Saudi Arabia was identified and rectified before initiation by the Authority.
- p. The profitability of the domestic industry was higher in 2017-18, when the price undercutting was high indicating absence of competition. However, the domestic industry was forced to reduce its prices to compete with imports, resulting in marginal price undercutting.
- q. The imports are depressing the prices of the domestic industry.
- r. Due to reduction of domestic prices, the profitability of the domestic industry has declined significantly. Further, there is a direct link between the decline in mark-up of import price over raw material price and decline in profits of domestic industry.
- s. The cash profits and return on capital employed earned by the domestic industry have declined significantly when compared to that in the beginning of the injury

period. Further, the domestic industry has earned very low returns during the period of investigation.

- t. The domestic industry is being forced to export at losses due to significant injury being caused by the subject imports.
- u. The domestic industry has merely sought that return allowed on depreciated plants be based on return for new plant. Such approach is not precluded under Annexure-III, which only requires that reasonable return be provided, which in this case is higher than 22%. Further, non-injurious price determined on the basis of depreciated assets would only address the situation of RIL, resulting in discrimination against any new producers, as held by the Supreme Courts in Reliance Industries Limited vs. Designated Authority. It is the consistent practice of the Authority to allow a return of 22% to the domestic industry, unless the interested parties demonstrate with evidence the need for consideration of different return, as held by the Tribunal in numerous cases.
- v. In the case of Bridge Stone Tyre Manufacturing vs. DA, the interested parties placed evidence to demonstrate that lower returns were earned globally by producers.
- w. As regards the reliance on European Fertilizer Manufacturer's Association (EFMA) v Council , the domestic industry submits that it has no objection if the Authority adopts the higher returns earned by it in the past for the determination of non-injurious price, in accordance with the submissions of the interested parties.
- x. While the low demand for the subject goods would have been sufficient for the domestic industry to utilize its entire capacity, but it was unable to do so due to significant competition from imports.
- y. With regard to the claim for examination of performance of entire value chain of products of RIL, it is submitted that since information regarding all economic parameters of the domestic industry is available for the like article itself, reference to a broader basket of products is impermissible under Para (vi) of Annexure – II. Further, allocation of resources to other products clearly indicates that production of like article has become unviable due to injury. In any case, the production of MEG has increased during the period of investigation and thus diversion of ethylene to other products is not required.
- z. Since RIL operates on SBU (Standalone Business Unit) basis, any expenses pertaining to other products, including any impairment expenses, have not been considered for the purpose of determining cost of production or the non-injurious price.
- aa. With regard to the claim that the Authority must examine both volume and price effects of dumped imports, it is submitted that the Authority is only required to examine whether imports had a volume or price effect to determine injury caused to the domestic industry. Such approach was followed by the Authority in the case of Caustic Soda from Japan, Iran, Qatar and Oman.

- bb. Contrary to the claims of the other interested parties, the Authority is not required to analyze every parameter provided under Para (vii) of Annexure II and existence of one or more parameters can be considered for determination of threat, as observed by WTO Panel in US – Softwood Lumber.
- cc. Contrary to the claims of the interested parties, the Authority is not required to conduct country-wise volume and price analysis as pre-condition to cumulative analysis, as observed by the Appellate Body in EC –Tube or Pipe Fittings.
- dd. As regards the claim for exclusion of 2017-18 since it was an exceptional period, it is submitted that the performance of the domestic industry has declined in the period of investigation when compared to 2016-17 or 2018-19, even if the data for the 2017-18 is excluded. Further, Para (v) of Annexure II requires segregation of injury caused due to other factors but there is no requirement for segregation of improved performance due to other factors.
- ee. The injury to the domestic industry is not caused due to other factors.
- ff. There exists a causal link between the dumped imports and the injury to the domestic industry.
- gg. The Authority is not required to conduct non-attribution analysis regarding features inherent to the domestic industry that have remained unchanged, such as raw material used, as held by the Appellate Body in EU – Biodiesel. Further, injury to the domestic industry must be seen as it exists.
- hh. Bio-MEG and petrochemical based MEG compete in the same market and thus, decline in the price of imports would force IGL to reduce its prices, leading to decline in profitability.
- ii. IGL has been unable to fully utilize its production capacities due to presence of cheap imports in the market and has been forced to export goods.
- jj. The other interested parties have failed to demonstrate the impact of Covid-19 on the performance of domestic industry with evidence.
- kk. IGL had closed its plant for only a brief period during Covid-19 pandemic, while RIL continued operating its plants despite decline in demand since cost of shutting down would have cascading impact on upstream plant. Further, RIL was forced to export significant quantities despite sufficient domestic demand, due to continuous dumped imports.
- ll. The domestic industry has suffered injury since 2019-20 which was prior to the pandemic. Further, low crude prices and pandemic are universal factors, the effects of which are not limited to the domestic industry.
- mm. Contrary to the claims of the other interested parties, decline in prices of MEG is not due to Covid-19 since shut-downs caused due to the same would have led to increase in costs and as a result increase in prices. However, the price of the subject imports declined during the period of investigation.
- nn. The domestic industry has claimed injury only on account of low profits in domestic sales. Further, profitability of the domestic industry would likely increase if the price of feedstock as available to exporters is considered.

- oo. The injury claimed cannot be attributed to export sales, and relates only to performance in the domestic market.
- pp. Injury to the domestic industry is not on account of investments since the EBIDTA of the domestic industry has reduced.
- qq. Performance of the domestic industry declined in 2019-20 on account of lower price realization and volatility caused by the dumping of the subject goods. For this reason, the domestic industry had previously filed a petition in December 2019.
- rr. The domestic industry did not suffer any injury due to shortage of raw materials. Further, provision of Oxygen during Covid-19 by RIL was not at the cost of its own production.
- ss. Oversupply in the market coupled with increase in capacities in China PR in 2019-20 sparked a price competition which forced the producers in the subject countries to reduce their prices, resulting in dumping.
- tt. MEG is globally sold at prices benchmarked to CFR China prices. However, producers in the subject countries offer discount at such prices when exporting to India, forcing the domestic industry to also reduce its prices, thereby causing price injury.
- uu. RIL has not acquired JBF Industries and Shubhlakshmi Polymers. Further, acquisition of Alok Industries by RIL cannot have any impact on the demand or supply of the product.
- vv. Decline in prices of MEG in other countries is not relevant to the present investigation.
- ww. Increase in prices of MEG post-period of investigation is temporary caused due to increase in freight container rates.
- xx. The US-China trade issues did not cause injury during the period of investigation since exports of MEG from US to China PR increased during such period.
- yy. There exists threat of further material injury to the domestic industry.
- zz. The producers in the subject countries have underutilized capacities which may be utilized to increase the volume of exports to India. Further, such unutilized capacities total upto 95% of the total demand in India.
- aaa. Limited demand for MEG coupled with significant production has led to global oversupply, as a result of which the producers have resorted to unhealthy trade practices by reducing their price to increase their market share.
- bbb. There exists minimal demand for MEG in the subject countries, which indicates that the total production in such countries is intended for exports.
- ccc. The producers in the subject countries have expanded their capacities in the period of investigation which is likely to come into full effect from 2021.
- ddd. In addition to the subject countries, producers in China PR have also enhanced their capacities, implying reduced demand for subject imports in the Chinese market.
- eee. The positive price undercutting implies that imports are likely to suppress and depress the prices of the domestic industry if duties are not imposed.

- fff. Producers in Kuwait and Saudi Arabia have received inputs at unfairly low prices, resulting in lower prices in their domestic markets as compared to other markets.

H.3. Examination by the Authority

88. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties.

I. Cumulative assessment

89. Article 3.3 of the WTO Agreement and Para (iii) of Annexure II of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:
- a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and
 - b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.
90. 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 is more than the *de minimis* limits prescribed under the Rules.
 - b. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
 - c. Cumulative assessment of the effect of imports is appropriate as the exports from the subject countries not only directly compete inter se but also with the like articles offered by the domestic industry in the Indian market.
91. With regards to the argument raised by the other interested parties that imports from Kuwait, Saudi Arabia and USA cannot be cumulatively analyzed as price of imports from Saudi Arabia has declined while price of imports from Kuwait and USA has not, the Authority notes that Article 3.3 of the Anti-dumping Agreement as well as Para (iii) of Annexure II expressly provide the conditions to be satisfied before the conducting cumulative analysis of the imports from all subject countries. Such provisions do not require the Authority to undertake a country-wise analysis of prices prior to such cumulation. Such view has also been taken the Appellate Body report in EC – Anti-

Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil [DS/129/AB], wherein it was held as follows –

“110. We find no basis in the text of Article 3.3 for Brazil's assertion that a country-specific analysis of the potential negative effects of volumes and prices of dumped imports is a pre-condition for a cumulative assessment of the effects of all dumped imports. Article 3.3 sets out expressly the conditions that must be fulfilled before the investigating authorities may cumulatively assess the effects of dumped imports from more than one country. There is no reference to the country-by-country volume and price analyses that Brazil contends are pre-conditions to cumulation. In fact, Article 3.3 expressly requires an investigating authority to examine country-specific volumes, not in the manner suggested by Brazil, but for purposes of determining whether the 'volume of imports from each country is not negligible'.”

92. In view of the above, the Authority holds that it is appropriate to assess the effect of dumped imports of the subject goods from Kuwait, Saudi Arabia and USA cumulatively.
93. The other interested parties have claimed that both significant volume and price effect must exist to conclude material injury. It is noted that with regards to determination of injury to the domestic industry, para (i) of Annexure-II to the Rules provides that the Authority must examine both, volume of dumped imports and price effect of dumped imports on the domestic prices and the impact of such imports on the domestic industry. The term “both”, in context to para (i) refers to examination of volume and price effect on one hand and the examination of impact of dumped imports on the domestic industry. However, such provision does not mandatorily require the Authority to determine existence of injury to domestic industry only where the volume of imports has increased and the dumped imports have had an adverse price effect.
94. With regards to the contention that overall performance of the value chain should be considered, the Authority notes that as per the provisions of para (vi) of Annexure – II to the Anti-Dumping Rules quoted below, the effect of imports on parameters of the domestic industry shall be assessed in relation to the like article only.

“(vi) The effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.”

95. In the present case, separate data for the performance in terms of production, sale and profitability of the like article has been provided by the domestic industry which shall form basis of the injury analysis, in accordance with the provisions of para (vii) above. Accordingly, the performance of the applicant in its overall value chain including upstream or downstream products is not relevant.
96. The other interested parties have also claimed that since 2017 was an exceptional year for MEG industry, the same should be excluded from the injury analysis. In this regard, reliance has been placed on the findings of the Authority in the case of Phenol from Thailand and USA. The Authority has conducted injury examination by comparing base year to the period of investigation as well as by conducting a year-on-year analysis.
97. The other interested parties have also claimed that since IGL produces Bio-MEG using a different production process, injury parameters for RIL and IGL cannot be clubbed. The Authority finds that injury analysis is required to be conducted having regard to the domestic industry for the like product. As noted above, Bio-MEG and MEG produced from ethane/butane/propane are like product, and therefore, shall be included in the injury analysis. Further, both products compete in the same market and are used interchangeably by the users. Thus, any changes in the demand or prices of MEG produced from ethane/butane/propane would have an impact on Bio-MEG and vice-versa. Thus, arguments made by other interested parties in this regard are not tenable.
98. Rule 11 of Anti-Dumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.
99. The Authority has taken note of various submissions of the domestic industry and the other interested parties on injury to the domestic industry and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.

II. Assessment of demand / Apparent consumption

100. For the purpose of the present investigation, the Authority has defined demand or apparent consumption of the product concerned in India as the sum of domestic sales of the domestic industry and other Indian producers and imports from all sources. The demand so assessed is given in the table below.

Particulars	Unit	2017-18	2018-19	2019-20	POI
Including captive consumption					
Sales of domestic industry	MT	***	***	***	***
Trend	Indexed	100	146	146	133
Sales of other producers	MT	***	***	***	***
Trend	Indexed	100	100	97	97
Subject imports	MT	9,05,364	5,41,087	7,07,961	5,23,864
Other imports	MT	1,60,583	91,173	78,587	27,747
Total demand	MT	***	***	***	***
Trend	Indexed	100	103	109	93
Excluding captive consumption					
Sales of domestic industry	MT	***	***	***	***
Trend	Indexed	100	168	176	156
Sales of domestic producers	MT	***	***	***	***
Trend	Indexed	100	100	97	97
Subject imports	MT	9,05,364	5,41,087	7,07,961	5,23,864
Other imports	MT	1,60,583	91,173	78,587	27,747
Total demand	MT	***	***	***	***
Trend	Indexed	100	93	103	85

101. It is seen that the sales of domestic industry, demand for the product under consideration (including captive consumption) was increasing steadily till 2019-20 but has declined in the period of investigation which the domestic industry has submitted that it may be due to COVID-19. Further, the volume of subject imports has also been decreased substantially.

III. Volume effect of dumped imports

102. With regards to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the

Authority has relied on the transaction wise import data procured from DGCI&S. The import volumes of the subject goods from the subject countries and share of the dumped import during the injury investigation period are as follows:

Particulars	Unit	2017-18	2018-19	2019-20	POI
Subject imports	MT	9,05,364	5,41,087	7,07,961	5,23,864
Kuwait	MT	***	***	***	***
Trend		100	80	100	89
Saudi Arabia	MT	***	***	***	***
Trend		100	42	49	23
USA		***	***	***	***
Trend		100	55	1,15,850	86,403
Other imports	MT	1,60,583	91,173	78,587	27,747
Subject imports in relation to					
Production	%	***	***	***	***
Trend		100	45	61	44
Consumption	%	***	***	***	***
Trend		100	58	72	62
Total Imports	%	***	***	***	***
Trend		100	101	106	112

103. It is noted that the volume of subject imports has reduced during the POI in absolute terms and in relation to production and consumption in India. This decrease may be due to COVID-19 as admitted by the domestic industry. However, the volume of imports seems to have not adversely affected the performance of the domestic industry.

IV. Price effect of the dumped imports

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

Price undercutting

105. To determine price undercutting, a comparison has been made between the landed value of the product and the average selling price of the domestic industry, net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex-factory level.

Particulars	Unit	Kuwait	Saudi Arabia	USA	Subject countries
Net selling price	Rs./MT	***	***	***	***
Landed price	Rs./MT	***	***	***	***
Price undercutting	Rs./MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	0-10	0-10	10-20	0-10

106. It is noted that the subject imports are undercutting the prices of the domestic industry. The price undercutting ranges from ***% in case of Kuwait and Saudi Arabia from where maximum dumped import took place.

i. Price suppression / depression

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

Particulars	Unit	2017-18	2018-19	2019-20	POI
Cost of Sales	Rs./MT	***	***	***	***
Trend	Indexed	100	126	104	87
Selling Price	Rs./MT	***	***	***	***
Trend	Indexed	100	97	70	65
Landed Price	Rs./MT	***	***	***	***
Trend	Indexed	100	106	72	62

108. It is seen that both cost of sales and selling price of the domestic industry have declined over the injury period.

109. With regards to the domestic industry's submission that injury must be analyzed either in terms of volume or price effects, the Authority notes that injury must be assessed based on the overall state of the domestic industry, and not merely on the effect that the imports have on the price. The domestic industry has not demonstrated injury in terms of volume parameters but has stated that it is suffering injury on account of the low prices of the

subject imports. Notwithstanding, the Authority has analyzed the price effects of imports on the domestic industry.

110. As regards the submission that the domestic industry was forced to match the prices of the subject imports in order to maintain its market share, the Authority has examined the said claim of the domestic industry. It is noted that cost of sales has of domestic industry has declined during the injury investigation period and selling price of the domestic industry is above its cost of sales. The gap between selling price and cost of sales is about 20% during POI as compared to about 8% during 2019-20. Domestic industry cannot solely rely on reduction in gap between its cost of sales and selling price in the POI as compared to base year to claim that it is suffering price suppression or price depression due to imports from subject country. Also, the market share and the sales of the domestic industry have improved from the base year to the POI.
111. The domestic industry has also claimed that: (a) landed price of the imports has declined significantly and was lowest during the POI; (b) decline in landed price has outpaced the decline in price of ethylene. The Authority has already noted that there is decline in cost of sales of domestic industry and selling price of domestic industry is above the cost of sales. Further, cost of sales has been reduced by about 16% during POI as compared to 2019-20 where as landed value has been reduced by about 14% only in the same period. Comparison with base year may always not give true picture. Therefore, decline in landed price of imports cannot be said to be causing price suppression or depression.

V. Economic parameters of the domestic industry

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

i. Capacity, production, capacity utilization and sale

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

Particulars	Unit	2017-18	2018-19	2019-20	POI
Capacity	MT	***	***	***	***

Trend	Indexed	100	128	128	128
Adjusted capacity	MT	***	***	***	***
Trend	Indexed	100	128	128	127
Production	MT	***	***	***	***
Trend	Indexed	100	141	136	139
Capacity utilization	%	***	***	***	***
Trend	Indexed	100	111	106	109
Domestic sales	MT	***	***	***	***
Trend	Indexed	100	168	176	156
Export sales	MT	***	***	***	***
Trend	Indexed	100	157	66	223
Captive consumption	MT	***	***	***	***
Trend	Indexed	100	130	124	116
Captive consumption in relation to domestic sales	%	***	***	***	***

114. It is noted that:

- a. The capacity of the domestic industry increased in 2018-19 due to capacity expansion by the domestic industry and has remained constant thereafter.
- b. The production and capacity utilization of the domestic industry declined in 2019-20 but has increased in the period of investigation. The production has been increased by more than 2% during POI.
- c. The domestic sales of the domestic industry increased over the injury period and have declined only in the period of investigation as a result of decline in demand on account of Covid-19 pandemic.

ii. Market share

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

Particulars	Unit	2017-18	2018-19	2019-20	POI
Including captive consumption					
Domestic industry	%	***	***	***	***
Trend	Indexed	100	142	134	143
Other producers	%	***	***	***	***
Trend	Indexed	100	97	89	104
Subject countries	%	***	***	***	***

Other countries	%	6.60	3.65	2.97	1.22
Excluding captive consumption					
Domestic industry	%	***	***	***	***
Trend	Indexed	100	181	171	184
Other producers	%	***	***	***	***
Trend	Indexed	100	107	94	114
Subject countries	%	***	***	***	***
Trend		100	64	76	68
Other countries	%	***	***	***	***
Trend		100	61	47	20

116. It is noted that the market share of the domestic industry has increased during the POI. This indicates that the dumped imports have not adversely affected the market share of the domestic industry.

iii. Inventories

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

Particulars	Unit	2017-18	2018-19	2019-20	POI
Opening inventory	MT	***	***	***	***
Closing inventory	MT	***	***	***	***
Average inventory	MT	***	***	***	***
Trend	Indexed	100	144	196	156

118. It is noted that the inventories with the domestic industry increased significantly till 2019-20 but declined in the period of investigation. The average inventory of the domestic industry has substantially reduced during the POI as compared to the previous year (i.e. 2019-20) which is an important indicator of financial improvement of domestic industry.

iv. Profitability, cash profits and return on capital employed

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

Particulars	Unit	2017-18	2018-19	2019-20	POI
Cost of Sales	Rs./MT	***	***	***	***
Trend	Indexed	100	126	104	87
Selling price	Rs./MT	***	***	***	***
Trend	Indexed	100	97	70	65

Profit/ (Loss)	Rs./MT	***	***	***	***
Trend	Indexed	100	48	14	28
Profit/ (Loss)	Rs. Lacs	***	***	***	***
Trend	Indexed	100	81	25	44
Cash Profit	Rs. Lacs	***	***	***	***
Trend	Indexed	100	94	51	60
Return on capital employed	%	***	***	***	***
Trend	Indexed	100	108	45	61

120. The domestic industry has claimed that there is a significant decline in profitability parameters during the POI as compared to the base year. However, it is seen that the profits of domestic industry reduced till 2019-20 but have increased during the POI. The percentage of profit earned during the POI on the cost of sales is about ***% (as compared to *** during 2019-20). Although, the selling price has reduced during the POI as compared to 2019-20, but the reduction in cost of sales is much higher during the same period. Further, cash profits have increased significantly during the POI as compared to 2019-20. Return on capital employed has also improved during the POI as compared to 2019-20. Due to extensive capital investment, the ROCE is about ***% during POI; which happens during initial period investment as the fixed market size of the product cannot absorb such huge burden of investment during the initial years. For conducting wholistic and objective assessment of economic parameters, Authority is also required to consider intervening trends during the injury investigation period and cannot rely merely only on end-to-end comparison.

v. Employment, wages and productivity

121. Employment, wages and productivity of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2017-18	2018-19	2019-20	POI
No. of employees	Nos	***	***	***	***
Trend	Indexed	100	100	93	82
Productivity per day	MT/Day	***	***	***	***
Trend	Indexed	100	141	136	139
Productivity per employee	MT/Employee	***	***	***	***
Trend	Indexed	100	141	146	169
Wages	Rs. Lacs	***	***	***	***
Trend	Indexed	100	190	173	147

122. It is seen that the number of employees and wages paid by the domestic industry have declined in the period of investigation. The productivity per day and productivity per employee have increased in the period of investigation, as the production of the domestic industry has increased.

vi. Growth

123. The trend of volume and profit parameters of the domestic industry are as under:

Particulars	Unit	2017-18	2018-19	2019-20	POI
Production	%	-	41	-4	2
Domestic sales	%	-	68	5	-11
Profit per MT	%	-	-52	-71	102
Cash profits	%	-	-6	-46	18
Return on capital employed	%	-	8	-59	37

124. It is noted that all volume parameters except domestic sales have shown improvement during the POI. It is further noted that profitability parameters have also shown improvement during the POI.

vii. Ability to raise capital investment

125. The Authority notes that the domestic industry has already increased capacity. From the examination of facts on record, it cannot also be considered that the ability of the domestic industry to raise further capital investment has been hampered.

viii. Factors affecting prices

126. From the examination of facts on record, there is no conclusive evidence to show that imports have adversely affected the price of domestic industry.

ix. Magnitude of dumping

127. It is noted that the subject goods are being dumped into India and the dumping margin is positive and significant.

I. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS

128. As per the Rules, the Authority, inter alia, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports.

Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.

129. The Authority has concluded that there is no injury to the domestic industry and therefore there is no further requirement to examine whether factors other than dumped imports could have contributed to the injury to the domestic industry.

J. OVERALL ASSESSMENT OF INJURY

130. On the basis of information on record and detailed analysis conducted hereinabove, the Authority concludes the following as regards injury to the domestic industry-
- a. There is decline in volume of imports of subject goods in absolute terms and in relation to production and consumption in India.
 - b. The landed price of the subject imports as well as cost of sales of the domestic industry have declined during the injury investigation period.
 - c. There is no conclusive evidence to show that the imports have had a significant depressing effect on the prices of the domestic industry.
 - d. The production, capacity utilization and market share of the domestic industry have increased over the injury period.
 - e. Profits, Cash profits and Return on Capital Employed of the domestic industry have increased in the POI. There is no impact on the ability of the domestic industry to raise fresh investment.
131. In view of the foregoing, the Authority, concludes that the domestic industry has not suffered material injury due to the dumped imports.

K. POST DISCLOSURE STATEMENT COMMENTS

L.1. Submissions made by the other interested parties

132. The interested parties have reiterated their submissions with regard to the product under consideration and inclusion of bio-MEG, confidentiality, initiation of investigation after recent termination, particular market situation and proper comparison, injury to the domestic industry, causal link. These facts have already been considered while issuing essential facts. These interested parties have provided no new legal or factual basis to justify why the facts considered by the Authority and proposed determination stated in the disclosure statement on these accounts were inappropriate. Additionally, the parties have submitted as follows:

- a. Petro Rabigh reiterates its submissions that it is related to SABIC through Saudi Aramco, which holds significant shares in both the companies. Therefore, a single weighted average rate of dumping margin should be granted to these related parties, regardless of whether Petro Rabigh has exported to India. The shareholding is sufficient to constitute relationship under Trade Notice No. 9/2018.
- b. The fact that SABIC did not acknowledge relationship with Petro Rabigh is not the relevant consideration for determination of relationship.
- c. The Authority has not provided reasons for considering export price to third countries for determination of normal value instead of considering cost of production plus SGA and reasonable profit as per its consistent practice.
- d. Even the European Commission has not used the third country methodology for computation of normal value for Kuwait. The European Union and Australia also consider cost of production, and not export price to third countries for normal value.
- e. Pakistan cannot be chosen as an appropriate third country for normal value determination since it is not 'similar' to Kuwait, therefore the prices would not be "representative". The economic conditions of the country of export (i.e., Kuwait) must be compared with the appropriate third country and not those in India. Based on such conditions, Oman would have been an appropriate third country for determination of normal value. Similarly, consideration of Indonesia was not appropriate.
- f. Selection of Pakistan as an appropriate third country for Kuwait on the basis of similarity in export volumes to Pakistan and India is not sustainable in law or logic.
- g. For selection of appropriate country, the criteria provided in para 7 of Annexure I should be applied.
- h. The rejection of China PR as a third country is erroneous since the export price to China PR would not be impacted by the non-market economy status.
- i. ExxonMobil Chemical Asia Pacific stated that it is only a related trader for YANPET and not other entities mentioned in the disclosure statement.
- j. The support letter filed by Indian Oil Corporation Limited should not be accepted since it is not in the appropriate form as required in Trade Notice 13/2018, and the support letter was not circulated to interested parties.
- k. The injury to the domestic industry is on account of import of raw material at high cost and captive consumption of the domestic industry.
- l. The volume parameters of the domestic industry have improved. The decline in sales is due to the decline in demand. Despite decline in the selling price of the domestic industry, profitability of the domestic industry has increased during the period of investigation as a result of reducing cost of sales.
- m. The profitability of the domestic industry was adversely impacted due to increase in interest and depreciation cost.
- n. The profitability of the domestic industry would likely have increased in case there was adequate demand in the market.

- o. Rejection of PCN merely because the contention was raised in the rejoinder is inconsistent with the law.
- p. The Authority has not conducted a causal link analysis, and has conducted only a non-attribution analysis.
- q. The Authority has not examined the injury with regard to statements in annual reports concerning impact of Covid-19 on demand, diversion of oxygen, and increase in inventories due to capacity expansion in China PR.
- r. When the demand for the product declined during the period of investigation, the domestic industry exported large volumes, which indicates that the injury is on account of a shift in interests of the domestic industry.
- s. The disclosure statement, the dumping margin table and confidential calculations shared by the Authority do not satisfy the requirements of Article 6.9 of the Anti-Dumping Agreement.
- t. The Authority has not appropriately disclosed how the export price has been calculated for non-cooperative channels of EQUATE Group.
- u. It should be recorded that MIC had filed a response to the questionnaire (post objection raised by the domestic industry).
- v. Despite detailed submissions regarding public interest by users, the same have not been examined in the disclosure statement.
- w. The Authority should consider non availability of international quality raw material at international competitive prices, impact of Covid-19, closure of units due to unavailability of such raw material, loss of livelihood to downstream industry, reduction in export of finished goods by MSME sector, market asymmetry likely to be established by the imposition of duties.

L.2. Submissions made by the domestic industry

133. The domestic industry reiterated its submissions with regard to public interest. The following submissions, concerning injury, causal link and normal value have been made by the domestic industry in response to the disclosure statement:
- a. The injury analysis is required to be conducted over the entire injury period and actual intervening trends are required to be considered, as observed by WTO Panel in Pakistan – BOPP and EC – Tubes and Pipes, whereas the disclosure statement leans heavily between the period of investigation and preceding year for price parameters, due to which the analysis is not objective.
 - b. Comparison limited to the period of investigation and the preceding year defeats the purpose of considering an injury period of four years.
 - c. The observation that profitability improved in the period of investigation implies an assumption that the domestic industry should have started suffering injury only in the period of investigation.
 - d. The Authority had earlier initiated an anti-dumping investigation in 2019, finding prima facie evidence of dumping, injury and causal link. The domestic industry had

started suffering injury due to imports in 2019-20, and thus some improvement compared to 2019-20 does not show that the domestic industry has not suffered injury. An improvement as compared to a period of injury cannot lead to a sound conclusion.

- e. While the subject imports have declined, the same is on account of increased capacities of the domestic industry. The imports increased in 2019-20 before declining again in the period of investigation, due to Covid-19, but have increased post POI.
- f. Since only imports in excess of demand-supply gap are injurious to the domestic industry, only such imports should be considered for examination of volume of imports. Imports in excess of the demand-supply gap have increased over the period, thus establishing that whereas the imports were largely occurring due to demand-supply gap, these are now occurring due to dumped prices.
- g. In a situation of demand exceeding supply, the prices would not be under pressure and the producers would be able to adjust their prices at least to the extent of changes in raw materials costs. Even then, the landed price of the subject imports has declined steeply over the injury period and was the lowest during the period of investigation.
- h. A comparison of the landed price with demand-supply gap shows that the exporters have reduced the landed price during the period where they have sought to increase the volume far in excess of market need due to demand-supply gap.
- i. The decline in landed price has coincided with the increase in capacities of the domestic industry, which shows a clear intent to prevent the domestic industry from capturing an increased market share.
- j. The mark-up of the landed price over prevailing ethylene prices had reduced and became negative during 2019-20 and the period of investigation, which is directly reflected in the profitability of the domestic industry.
- k. In 2017-18, the domestic industry was able to get higher than import price. In 2018-19, the domestic industry increased its capacities and had to reduce its prices, in order to compete with the much lower import price. In 2019-20, having lost significant share in 2018-19, the exporters reacted to retain their market, by reducing their prices. This allowed them to increase their volume and market share. Again, during the period of investigation, the exporters reduced their prices more than raw materials costs, forcing the domestic industry to reduce prices.
- l. It has not been considered that the price of imports is even lower than the cost of raw material used to produce the subject goods based on international prices of ethylene. Even though the disclosure statement records the decline in raw material cost, the trends of the same vis-à-vis the selling price and landed price have been ignored.
- m. The decline in selling price over the injury period is much higher than the decline in cost of sales of the domestic industry.
- n. India Glycols Limited was already in losses in the period of investigation. While Reliance Industries Limited had been able to maintain its profitability during the period of investigation, it has also started suffering losses in the recent period.

- o. The profitability of the domestic industry should be compared to the period when it was not suffering injury due to dumping, that is, 2017-18 and 2018-19.
- p. The improvement in profits of the domestic industry is largely attributable to the inherent improvement in cost efficiencies, and not any improvement in market situations, as the conversion cost declined in the period of investigation.
- q. Profits, profit per unit, cash profits and return on investment have declined compared to 2018-19 and the base year.
- r. The EBIDTA has declined in period of investigation, even in relation to preceding year, which shows that the cost of the domestic industry not impacted by capacity expansion leading to higher interest and depreciation cost.
- s. Due to the decline in profitability, the domestic industry has earned low returns on its investment during the period of investigation and preceding year, especially considering that this is return before allowing for interest cost and taxes of the domestic industry. The return was lower than that considered reasonable.
- t. Owing to the inability to sell the subject goods in the domestic market, the domestic industry was forced to resort to exports, even at loss.
- u. Had the domestic industry not exported the subject goods in significant quantities, its performance would have shown a sharper decline, since the higher volume allowed it to reap benefits of economies of scale. While such losses in exports have been segregated, the resultant higher profits of the domestic industry are being held against the domestic industry.
- v. The Authority should consider post POI data in the present case, which shows the following
 - i. The imports have increased significantly in 2021-22 imports in Q1 2022-23 (Ann1.) are double than that in the period of investigation, even though demand increased by 42%.
 - ii. The imports in relation to domestic production have returned to almost the same levels as that prior to capacity expansion by the domestic industry.
 - iii. The imports have also increased in relation to consumption, resulting in the domestic industry facing a decline in market share by 23%.
 - iv. While the raw material cost and cost of sales of the domestic industry increased, it was forced to match the prices of the domestic industry post POI due to which it has suffered losses, cash losses and negative returns.
 - v. The volume parameters of the domestic industry have also declined post POI.
 - vi. Despite a demand-supply gap in the country, the domestic industry has faced under-utilized capacities post POI.
- w. During POI, the raw material price had reduced due to Covid-19 pandemic, which is why the domestic industry had been able to maintain its profitability. However, post POI, the raw material price increased, due to which the domestic industry suffered loss.

- x. The Authority has considered post POI data in a number of original investigations in the past as well, such as Front Axle Beam, Carbon Black, Viscose Staple Fibre, Nitrocellulose, HR 304, etc.
- y. It is not necessary that the domestic industry must suffer losses before it can be considered as suffering material injury, since the law requires examination of whether there has been a decline in profits.
- z. In a number of cases in the past, such as Décor Paper, Polyester Spun Yarn, LDPE, PET Resin etc., the Authority has found that the domestic industry has suffered material injury in a number of cases, in view of the decline in profits of the domestic industry, even though the domestic industry did not suffer losses.
- aa. For a conclusion that material injury exists, it is not necessary that all factors listed in law must show deterioration. The WTO Panel in Pakistan – BOPP, it was noted that while an investigating authority must assess all factors, there is no requirement that all factors be required to show a decline. Same view was taken by Tribunal in Reliance Industries Limited vs. Designated Authority.
- bb. When faced with dumped imports, any domestic producer has two options – (a) either maintain its prices, in which case the customers may shift to cheaper imports, or (b) reduce its prices, to retain the customer. In the present case, the domestic industry did not have the option of letting its customers shift since it would have impacted the upstream operations, and operations relating to other products dependent on such upstream operations.
- cc. The parameters listed under the law are only minimum parameters, and not exhaustive, as held by the Tribunal in Lubrizol (India) Private Limited vs Designated Authority. However, other parameters identified by the domestic industry have not been considered in the disclosure statement.
- dd. Profits are of a paramount importance to a business enterprise, as no business can hope to survive without sufficient profits. The Hon'ble Tribunal in the case of Forum of Acrylic Fibre Manufacturers v. Designated Authority had also emphasized the importance of profits.
- ee. A possible finding that there is no injury to the domestic industry would be inconsistent with the past findings of the Authority (such as LDPE) on similar facts relating to economic parameters of the domestic industry, the Authority found injury. Indeed, it would be discriminatory. Any quasi-judicial authority cannot keep taking different views on similar set of facts, as held by High Court of Delhi in the case of Interglobe Aviation Ltd. vs. Union of India.
- ff. There have been several cases (such as PSY, Silicone Sealants, Plan MDF Board, Persulphates) wherein the Authority concluded that the domestic industry had suffered injury, in terms of decline in profitability over the injury period; notwithstanding an improvement in profits as compared to preceding year.
- gg. In the initiation notification, the Authority had recorded prima facie evidence regarding such threat, but the same has not been examined.

- hh. The information given with regard to threat of further injury in its submissions has not been considered in the disclosure statement. The following show threat of injury
- i. While the volume of subject imports has briefly declined during the period of investigation, such volumes have increased significantly post POI and are higher than at the beginning of the injury period.
 - ii. On a quarterly basis, the imports have shown a consistent increase in each quarter post April-June 2020, till April-June 2022.
 - iii. Even during injury period, the imports in excess of the demand-supply gap (which are injurious to the domestic industry) had increased, and were 4 times the demand-supply gap during the POI.
 - iv. The producers in the subject countries have significant idle capacities, almost equivalent to 95% of the demand in India, and are undertaking fresh expansion.
 - v. There is a global oversupply for MEG, due to which the producers resort to dumping to clear their stock.
 - vi. While producers in the subject countries account for 38% of the global production, they constitute a mere 7% in demand, showing that the production is meant for exports.
 - vii. There is no or insignificant demand in Kuwait and Saudi Arabia. In case of USA, 57% of the capacities are set up for exports.
 - viii. While China PR was one of the largest importers of MEG globally, there have been multiple capacity expansions there in the last three years. Exports to China would now be redirected to the next largest consumer in Asia, that is, India.
 - ix. The positive price undercutting during the period of investigation indicated that the imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices.
 - x. The imports are priced below the non-injurious price of the domestic industry. As noted by Tribunal in Forum of Acrylic Fibre Manufacturers vs. Designated Authority, imports below non-injurious price would be a barometer in a likelihood analysis, ringing an alarm.
 - xi. The landed price and cost of sales of the domestic industry showed that in the absence of duty, it would be forced to match the import price, and sell at much lower profits.
 - xii. Post POI, the threat has materialized as the volume of imports increased and the volume parameters of the domestic industry showed a decline. Further, the profitability of the domestic industry deteriorated, and it started incurring losses.
- ii. The significant increase in the volume of imports in the post-POI period is most relevant for determination of threat of injury since such increase relates to the most recent period.
- jj. As held by WTO Panel in US – Softwood Lumber, the parameters provided under Para (vii) of Annexure II to Anti-Dumping Rules are to be examined by the Authority, but it is not necessary that every parameter exist, before making a determination of threat of further injury.

- kk. The Authority had initiated the investigation after examining accuracy and adequacy of evidence provided, and satisfaction of the Authority regarding the existence of injury. Even if it only a prima facie opinion is formed at the stage of initiation, the same still does not imply that the observations were made superficially. As held by High Court of Delhi in D.T.C V. Delhi Administration, prima facie means sufficient to establish a fact or raise a presumption unless disproved or rebutted. In the absence of any adverse evidence post stage of initiation, the observations made at the stage of initiation should hold good.
- ll. At the stage of initiation, the Authority noted that performance of the domestic industry was adversely impacted in respect of profits, cash profits and return on investment. On the same trends and the same facts, a different view cannot be taken at the stage of findings.
- mm. As regards contention of the interested parties that the volume of imports have declined while the volume parameters of the domestic industry have improved, it is submitted that the same is clearly an effect of the increase in capacity of the domestic industry. As noted by the Designated Authority in the case of Phenol, decline in imports is a natural consequence of such an increase in capacities in the country.
- nn. In a number of cases, the Authority has found that the domestic industry has suffered injury, where the volume parameters had shown improvement and imports had declined; owing to the adverse price effect of imports.
- oo. The interested parties have contended that the injury to the domestic industry is due to use of naphtha, instead of the “cost effective” ethylene route. However, the domestic industry was having higher profitability when the domestic industry was earlier producing proportionately more through naphtha route. As the production increased through ethane route, profits fell sharply. In any case, non-attribution analysis is not required to be conducted for factors inherent to the domestic industry.
- pp. Even if it is assumed that the domestic industry has partly suffered injury due to use of naphtha, it would not impact the quantum of duty, since injury margin is lower.
- qq. As noted by the Authority, the particular market situation in the subject countries allows exporters to procure raw materials and inputs such as natural gas at unfair prices. Despite the same, they have resorted to dumping.
- rr. While the interested parties have claimed that the year 2017-18 is abnormal due to higher demand, the demand has increased thereafter in 2018-19 and 2019-20, before declining due to Covid-19 in the period of investigation. Further, the mark-up of landed price over the prevailing cost of raw material was in fact, lower in 2017-18 than in 2018-19.
- ss. Even if the period of 2017-18 is ignored, the performance of the domestic industry has shown a decline as compared to 2018-19. Further, the data relating to 2016-17 is also available before the Authority, which shows that the profitability during the period of investigation is lower than that in 2016-17 as well.

- tt. Since various aspects and factors showing the injury suffered by the domestic industry have not been considered in the disclosure statement, the domestic industry requests another hearing to explain the same.
- uu. While the producers from Saudi Arabia and Kuwait claimed that they have sufficient domestic sales for determination of normal value, the disclosure statement shows the contrary. This clearly shows that the producers willfully misled the Authority at the stage of filing response, and their response should be rejected.
- vv. Even if the data pertaining to exports to third country was submitted at a later stage, no non-confidential version of the same was even circulated.
- ww. The domestic industry has not been given complete disclosure of non-injurious price and is thus unable to give adequate comments on the same.

L.3. Examination by the Authority

- 134. The Authority has examined the post disclosure submissions made by the interested parties and notes that most of the comments are reiterations which have already been examined suitably and addressed adequately in the relevant paras of the final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and considered relevant by the Authority are however examined below.
- 135. Petro Rabigh has reiterated its claim that individual rate of dumping margin determined for SABIC/SABIC group producers should be extended to Petro Rabigh. The Authority has not recommended imposition of anti-dumping duty and therefore there is no need to examine if individual rate of dumping margin determined for SABIC/SABIC group producers should be extended to Petro Rabigh in the facts of the present case.
- 136. The EQUATE Group has claimed that the normal value determined is not appropriate for the reasons that (a) the Authority has deviated from its practice of considering cost of production (b) the Authority has disregarded China since it is a non-market economy, (c) the Authority has considered export price to Pakistan as appropriate price (d) the Authority did not consider export price to Oman as appropriate price, (e) the provisions of Para-7 should be applied to determine appropriate country. In this regard, the Authority notes that Anti-dumping Rules provides for two alternative methods for determination of normal value when the normal value cannot be determined based on domestic selling price. The first alternative is that the normal value can be determined based on export price to third countries. The second alternative is that the normal value can be determined based on cost of production in the country of origin plus SGA expenses and profit. The Authority has determined normal value based on first alternative and there is no departure from its consistent practice.
- 137. In the subject investigation, as per the information available on record, producer/exporter in Kuwait had exported MEG to 4 countries namely, China PR, India, Pakistan & Oman.

Highest export volume of MEG from Kuwait was to China PR. Second highest export volume from Kuwait was to India. Third highest export volume from Kuwait was to Pakistan and lowest export volume from Kuwait was to Oman.

138. China PR was not considered as appropriate third country and export price to China PR was not considered as representative because China PR is considered as 'non-market economy' country for the purpose of anti-dumping investigations. Any price of exports to China would be in response to the prices prevailing within China, and therefore are likely to be adversely impacted by the factors of non-market economy. Pakistan was considered as an appropriate third country and export price to Pakistan was considered as representative because export volume from Kuwait to Pakistan was the highest after China PR and India. Exports to Oman from Kuwait were the lowest among all 4 countries and therefore Oman cannot be considered as 'appropriate' country for comparison and export price from Kuwait to Oman cannot be considered as representative.
139. As regards alleged inappropriateness of Pakistan, the Authority notes that comparability of export volumes is most appropriate basis, considering that the prices are influenced by the associated volumes.
140. The Authority also notes that Para-7 of Annexure-I is applicable for determination of normal value in case of anti-dumping investigation on imports from non-market economy country.
141. With regard to submission of the interested parties that the injury to the domestic industry is caused due to import of raw material, the Authority notes that it is well settled that injury to the domestic industry is required to be seen as the domestic industry exists. As noted by the Appellate Body as well, in European Union – Biodiesel, no non-attribution analysis is required to be conducted with regard to inherent features of the domestic industry, such as access to raw material.
142. Insofar as the injury with regard to captive consumption of the domestic industry is concerned, the Authority notes that profitability parameters, and volume parameters of domestic sales and market share of the domestic industry relate only to its merchant domestic sales.
143. With regard to submissions of the interested parties concerning the injury suffered by the domestic industry, the Authority notes that the volume parameters of the domestic industry have improved in the POI. Also, both cost of production and selling price declined. Therefore, it cannot be said that decline in selling price is due to imports of subject goods. Profitability of the domestic industry has also improved in POI as compared to preceding year. The Authority has found that the domestic industry is not suffering injury due to imports of the subject goods.

144. The interested parties have claimed that the domestic industry has suffered decline in profitability due to increase in interest and depreciation costs. The Authority has concluded that there is no material injury to the domestic industry. The domestic industry has also claimed that injury analysis is required to be conducted over the entire injury period, whereas the Authority has relied on the trends between the POI and the preceding year for the profitability parameters. The Authority has conducted wholistic and objective assessment of economic parameters for the injury investigation period to examine the status of the industry as a whole. Authority has not limited its examination to any single economic parameter and has not limited its examination of economic parameters based only on end-to-end comparison. Increase in profitability from the year 2019-20 to the POI is a significant factor in the injury analysis.
145. With respect to the claim of the domestic industry that there is a significant decline in profitability parameters during the POI as compared to the base year, the Authority notes that the profits of the domestic industry have declined from the base year till 2019-20, thereafter, there has been an improvement in profitability during the POI. The Authority also notes that there is a reasonable percentage of profit earned during the POI in comparison to the cost of sales. During the POI, the percentage of profits earned on cost of sales is **%, as against **% during the year 2019-20. It is seen that from the year 2019-20 to the POI, the decline in cost of sales is higher than the decline in the selling price. Cash profits and return on capital employed improved in the POI as compared to 2019-20. Due to extensive capital investment, the ROCE is about **% during POI; which happens during initial period investment as the fixed market size of the product cannot absorb such huge burden of investment during initial years. In order to conduct a wholistic and objective analysis of the injury parameters, the Authority is required to observe the trends throughout the injury investigation period.
146. With respect to the claims of the domestic industry regarding the decline in landed price, the Authority notes that it has addressed the same in the relevant section of these findings and a separate examination is not warranted.
147. As regards the submissions of the domestic industry, they are primarily based on the following – (a) the injury examination should not be restricted to comparison with preceding year only, (b) decline in profits shows that the industry has suffered injury, (c) the Authority had noted at the stage of initiation that there is *prima facie* injury in the form of decline in profitability, (d) the Authority had *prima facie* found that the domestic industry suffered injury in the POI of the previous investigation and, 2019-20 was also a period of injury, and therefore it was inappropriate to do comparison with the immediate previous year. Since Authority has examined in detail in these findings the issue of existence of material injury in the relevant section of this findings, further separate

examination of these arguments of the domestic industry is not warranted. The observations made by the Authority at the stage of initiation were only *prima facie* observations, and would not amount to conclusive determinations by the Authority. The Authority has arrived at its conclusion in the instant final findings after detailed consideration of all injury parameters.

148. The domestic industry has also submitted that the decline in prices of imports is lower than the cost of raw material used to produce the goods, and that the decline in selling price is higher than the decline in cost of sales. The Authority has examined this contention in the relevant sections of these findings, and therefore a separate examination is not warranted.
149. With respect to the claim that the domestic industry was forced to shut down its plants due to lack of sales, it is seen that throughout the injury period and POI, the capacity utilization of the domestic industry is at a high level despite an increase in production capacity in the year 2018-19. Moreover, the volume of sales of the domestic industry have been significant.
150. The domestic industry has also claimed that it has been forced to rely on export markets. However, it is clear that prices in the domestic market are more remunerative than the export market and therefore it cannot be said that domestic industry was forced to export to third countries. It is also noted that the capacity utilization and the market share of the domestic industry have been at significantly high levels, which indicates good domestic performance. The export sales of the domestic industry were highest during the POI, when the total domestic demand in India was at the lowest level.
151. With regard to PCN-wise comparison, it is noted that the initiation notification made it clear that no PCN-wise analysis was proposed at that stage. The initiation notification also provided that interested parties should make submissions relevant to the investigation in the form and manner prescribed. Any submissions regarding need for PCN should be made at this stage itself, since in case a PCN methodology is adopted, the Authority would have to call for necessary information from all interested parties. However, the interested parties did not make any submission regarding need for PCN at this stage, or even during the oral hearing or written submissions filed pursuant to the same.

L. CONCLUSION

152. Having regard to the contentions raised, information received, submissions made and facts available before the Authority as recorded in these findings and on the basis of the determination of dumping and consequent injury to the domestic industry made hereinabove, the Authority concludes that:

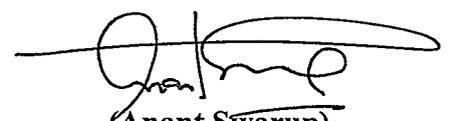
- a. The product under consideration has been exported from subject countries at a price below the normal value, thus resulting in dumping.
- b. There is decline in volume of imports of subject goods in absolute terms and in relation to production and consumption in India. Share of subject imports in total demand has reduced during the injury investigation period.
- c. The cost of sales of the domestic industry has declined during the injury investigation period and selling price of the domestic industry is above its cost of sales.
- d. The production, capacity utilization and market share of the domestic industry have increased over the injury period.
- e. Examination of available information shows that the imports did not have significant suppressing or depressing effect on the prices of the domestic industry.
- f. Profits, Cash profits and Return on Capital Employed of the domestic industry have increased in the POI. There is no impact on the ability of the domestic industry to raise fresh investment.

M. RECOMMENDATIONS

153. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link thereof in terms of Rules.
154. Having examined the contentions of various interested parties and on the basis of above facts, circumstances and analysis, the Authority concludes that the domestic industry is not suffering material injury in terms of the provisions enshrined under the Anti-Dumping Rules. In view of the above, the Authority does not consider it appropriate to recommend levy of anti-dumping duty on the imports of subject goods from subject countries. Therefore, in terms of Section 9A and 9B of the Customs Tariff Act read with Rule 14(b), Rule 17(1)(a)(ii) and Rule 11(2) of the Anti-Dumping Rules, the Designated Authority decides to terminate the present investigation which was initiated vide Notification No. F. No. 6/8/2021-DGTR, dated 28th June 2021.

N. FURTHER PROCEDURE

155. An appeal against this notification shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 and the decision of the Hon'ble High Court of Delhi in M/s Jindal Poly Film Ltd. v. Designated Authority W.P. (Civil) No. 8202/2017.


(Anant Swarup)
Designated Authority