

To be published in Part-I Section I of the Gazette of India Extraordinary
No.14/05/2016-DGAD
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Anti-Dumping & Allied Duties)
4th Floor, Jeevan Tara Building, 5 Parliament Street, New Delhi -110001

NOTIFICATION

Dated the 8th December, 2017

(Final Findings)

Subject: Anti-dumping investigation concerning imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items”, originating in or exported from China PR.

F.No.14/05/2016-DGAD: Whereas, All India Pottery Manufacturers’ Association (AIPMA) and the Indian Ceramic Society (herein referred as petitioners/ petitioner associations) have filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and Rule *supra* for initiation of anti-dumping investigation and imposition of anti-dumping duty concerning imports of “Ceramic tableware and kitchenware, excluding knives and toilet items”, (hereinafter also referred to as Ceramic tableware and kitchenware or the subject goods),originating in or exported from China PR (hereinafter also referred to as the subject country) alleging dumping of subject goods from subject country and consequent injury to the Domestic Industry.

2. And whereas the Authority on the basis of prima facie evidence submitted by the applicant, issued a Notification 14/05/2016-DGAD dated 13th October, 2016, published in the Gazette of India, Extraordinary, initiating the subject anti-dumping investigation in accordance with the sub Rule 5 of the AD Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the Domestic Industry.
3. The Authority vide Preliminary Findings issued vide Notification No. 14/05/2016-DGAD dated 4th May, 2017 recommended provisional anti-dumping duty in the present investigation. Subsequently vide Corrigendum Notification No 14/05/2016-DGAD dated 15th May, 2017, HS codes were corrected. Ministry of Finance issued a notification imposing provisional antidumping duty vide Customs Notification No.27/2017-Customs (ADD) dated 12th June, 2017.

B. PROCEDURE

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

- i. The Designated Authority, under the above Rules, received a written application from the Applicants on behalf of the domestic industries, alleging dumping of Ceramic Tableware and Kitchenware products originating in or exported from China PR.
- ii. The Authority notified the Embassy of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 *supra*.
- iii. The Authority, on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject country. The Authority issued a public notice dated 13th October, 2016 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
- iv. The Authority sent a copy of the initiation notification to the Embassy of China PR in India, known producers/exporters from China PR, known importers/users and the Domestic Industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
- v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of China in India in accordance with Rule 6(3) of the Rules *supra*.
- vi. The Authority sent exporter's questionnaires to elicit relevant information to the following known producers/exporters in China PR (whose details were made available by the applicant) and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the AD Rules.
 - a. Kangfu Ceramic Manufacturing Co.
 - b. Changsha Joysaint Dishware Co. Ltd.
 - c. Zibo Timestone International Co. Ltd.
 - d. Shanghai Fine-V Homeware & Gifts Int'l Trade Co. Ltd.
 - e. BRT Industry Co. Ltd.
 - f. Hojiang Ceramic Shenzhen Co. Ltd.
 - g. Shenzhen Goldenwall Ceramic Co. Ltd.
 - h. Qinhuangdao Hdt Trading Co. Ltd.
 - i. Karosa Chinaware (Shenzhen) Co. Ltd.
 - j. Jingdezhen Amtion Porcelain Co. Ltd.
 - k. Handan FengfengShengyuan Ceramic Co. Ltd.
 - l. Leta International Group Co. Limited
 - m. Linton International Co. Ltd. (Rizhao)
 - n. Guangxi Yulin City Jiachao Ceramics Co. Ltd.
- vii. In response to the initiation notification, none of the exporters/producers from China have responded.
- viii. China Chamber of Commerce for Import & Export of Light Industrial Products & Arts-Crafts (CCCLA) and M/s Walmart India Pvt Ltd. sought extension of time to submit response after expiry of the original time limits which was duly granted by the Authority i.e. upto 19th December 2016. The importer filed the response in the

extended period of time whereas CCCLA only filed legal submissions but none of its members filed questionnaire response within the allowed extended time.

- ix. The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules
 - a. K.S. Overseas
 - b. East Coast Distributors Pvt. Ltd.
 - c. Raj Agencies
 - d. YSR Industries Pvt. Ltd.
 - e. Wal-Mart India Private Limited
 - f. Whitegold Trading Co. Pvt. Ltd.
 - g. ICC Realty (I) Pvt. Ltd.
 - h. Future Retail Limited
 - i. Krishna Enterprises
 - j. Karma Trading
- x. M/s Wal-Mart India Private Limited, an importer, had filed Importer Questionnaire responses & legal submissions in the allowed extended time. M/s Hamilton Housewares Pvt. Ltd. also filed the injury submission on 10th April, 2017 and Importer's questionnaire response on 2nd May, 2017, much beyond the time period given by the Authority to file responses i.e. 28th November, 2016 and extended up to 19th December, 2016. The submissions have been made available in the public file and also addressed appropriately in this finding.
- xi. Copy of initiation notification was also sent to known Indian producers/Associations of the product under consideration including the petitioners.
- xii. In response, the following have filed their letters supporting the petition
 - a. Yashvi Enterprise,
 - b. Anil Fine Ceramic,
 - c. Samrat Ceramics,
 - d. Raghuveer (India) Limited,
 - e. Marvel Ceramics Private Limited,
 - f. Sea Shell Ceramics (India) Private Limited,
 - g. Mudrika Ceramics (I) Ltd.,
 - h. Shan Tablewares Private Limited,
 - i. Feather Touch Ceramics Private Limited,
 - j. Oasis Ceramics Private Limited
 - k. Tata Ceramics Limited.
- xiii. Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. Submissions made by all interested parties have been taken into account in this Final Finding.
- xiv. Information provided by the interested parties on confidential basis was examined with regard to 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 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 and the same were kept in the public file maintained by the Authority as per the Rules.

- xv. Further information was sought from the applicant 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 investigation.
- xvi. Non-injurious price has been determined based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the Domestic Industry on the basis of Generally Accepted Accounting Principles (GAAP) so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xvii. Investigation was carried out for the period starting from 1st April 2015 to 31st March 2016 (POI). The examination of trends, in the context of injury analysis, covered the period from April 2012-March 2013, April 2013-March 2014, April 2014-March 2015 and the Period of Investigation (POI).
- xviii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the POI. The authority has relied upon import data procured from DGCI&S in the present investigation.
- xix. The Authority had issued preliminary findings on 4.05.2017 and the interested parties were asked to file their comments on preliminary findings.
- xx. Subsequent to the issuance of preliminary finding, following interested parties filed submissions to the said investigation and the recommendation thereof:
 1. Blue Mountain Impex (P) Ltd.)
 2. K.S. Overseas
 3. Devnow International
 4. Raagashree Impex Pvt. Ltd
 5. Deco Pride India Pvt Ltd
 6. Vijay Exim
 7. Akshita Enterprises
 8. White Gold Trading Co. Pvt. Ltd.
 9. M/s Hamilton Houseware Pvt. Ltd.
 10. China Chamber of Commerce for Import and Export of Light Industrial products & Air Crafts
 11. Embassy of People's Republic of China in India
- xxi. China Chamber of Commerce for Import and Export of Light Industrial products & Air Crafts and Embassy of China in India filed only submissions commenting on the petition or the preliminary findings and have not provided any quantified verifiable information. Also, none of the Chinese exporters had filed any information, submissions or exporters questionnaire response.

- xxii. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to the interested parties to present their views orally in an Oral hearing held on 13th July, 2017. A second public hearing was conducted on 31st October, 2017 in view of the change of the Designated Authority as directed by the Hon'ble Supreme Court in the case of Automotive Tyre Manufacturers' Association (ATMA) vs. Designated Authority, delivered in Civil Appeal No. 949 of 2006 on 07-01-2011. The parties, who presented their views in the oral hearings, were requested to file written submissions of their views expressed orally, followed by rejoinder submissions.
- xxiii. The hearing was attended by the domestic industry, other Indian producers, importers, China Chamber of Commerce and Embassy of China. None of the Chinese exporters attended the oral hearing, nor filed any information pursuant to the hearing held.
- xxiv. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of 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 this Final Finding.
- xxv. 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 considered such interested parties as non-cooperative and recorded these findings on the basis of the 'facts available'
- xxvi. A Disclosure Statement was issued on 29.11.2017 containing essential facts under consideration of the Designated Authority, giving time up to 06.12.2017 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
- xxvii. *** in this Final Finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxviii. The exchange rate adopted by the Authority for the subject investigation is 1US\$=Rs. 65.91.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

Views of the Domestic Industry are as follows:

5. The Domestic Industry made the following submissions:
- i. The product under consideration is Ceramic tableware and kitchenware, excluding knives and toilet items, originating in and exported from China PR.
 - ii. Earthen ware, bone china, stoneware and porcelain-ware all constitute ceramic products and therefore the product under consideration includes kitchenware and tableware of ceramics.
 - iii. The various hard, brittle, heat-resistant and corrosion-resistant materials made by shaping and then firing a non-metallic mineral, such as clay, at a high temperature are Ceramics. Bone China is manufactured from calcium phosphate (bone ash), clay, feldspar and quartz powder.

- iv. Tableware, kitchenware, serve ware cookware are the words used interchangeably in day to day business of this trade.
- v. Domestic industry constituents are producing and selling different types of product under consideration. All these goods fall under the description of Ceramics. In particular, the constituents of the domestic industry produce tableware and kitchenware of bone chine, porcelain and stone.
- vi. The product has various properties such as powerful hydrophobic and oleo phobic properties, enormous non-stick properties, hygiene protection for ceramic surfaces, strong abrasion resistance, short drying period, can be stored directly after application, resistant to temperature change, drying at room temperature, chemical and abrasion resistant, high efficiency through economical use food safe, environment-friendly, completely frost proof.
- vii. The subject good is used for the purposes of serving, eating, cooking, drinking and used as tableware, kitchenware, serve ware and cookware etc.
- viii. Manufacturers use the terminology bone china in view of perception and awareness about it in consumers, more as a marketing gimmick. Depending on regional raw material availability, little change in raw material and its composition is done from time to time and producers and sales channels have evolved a new term as New Bone China or porcelain or even stoneware etc.
- ix. Change in raw material is basically done to achieve similar chemical properties via available raw materials. All are similar in terms of usage, production, shelf life, and are commonly known as CERAMICS.
- x. Ceramic tableware, kitchenware and serving ware have no difference in terms of technical properties. The only difference may be specific end use of some items (*for example, a spoon cannot be used where a saucer is required*). The name depends on the usage of the items.
- xi. In day to day market parlance, the distinction between kitchen ware and table ware is quite blurred. Parties tend to use the word table ware synonym with various kinds of ceramic table wares and kitchen ware or serving ware.
- xii. The difference between table ware and kitchen ware is extremely minute. It is just a perception with no commercial difference. For example, products such as casseroles, handi, bake ware, cook and serve ware etc. can both be described as table ware as well as kitchen ware.
- xiii. Kitchenware includes all the items of cook ware which covers utensils used in kitchen such as cooking vessels, saucepans and frying pans etc. Even otherwise, there are very few selective items which could exclusively be classified as table ware or kitchen ware. Most of the products fall under a common category.
- xiv. Fireclay cannot be excluded from the product scope because it falls under the category of ceramic wares and are imported under the name of ceramics. The domestic industry manufactures the same. A sample was also presented during the first Oral Hearing. Fireclay falls under the category of ceramic wares and imported under the name of ceramics.
- xv. As far as sublimation cup is concerned, the same is being produced by the constituents of domestic industry. The domestic industry not only manufactures plain cups but also

- coated cups and coated printed cups. Sales invoices of same have been submitted to the authority on confidential basis.
- xvi. The authority rightly stated at the time of (first) oral hearing that the import of alleged cookware was made by an importer calling the product as cook ware and a serve ware. Thus, if interested parties are selling a product as cook ware and serve ware, it follows that there is no scientific methodology followed by the importers or traders in describing the product.
- xvii. Bone china, stoneware and porcelain-ware all constitute ceramic products. The same view was taken by European commission in the anti-dumping investigation against China with regard to the same product scope.
- xviii. The domestic industry has analyzed the imports of the product based on available information in the import data and found that no standard, scientific or consistent methodology has been followed by importers in reporting the imports of the product in India. The import data does not show a universally accepted and objective definition for segregating different product types considering the varied descriptions used by the importers while clearing the goods. No specific features are available in the import data to segregate the imports into different types. So it concludes that all these products i.e bone china, porcelain and stone ware are captured as ceramic wares only, belong to one family of the subject goods and are not reported differently.
- xix. The same product form can be used as kitchenware, serve ware or tableware. Both kitchenware and tableware are recognised under the customs as ceramic ware falling under 6911 and 6912. Kitchenware includes all the items of cook wares which covers utensils used in kitchen such as cooking vessels, saucepans, and frying pans etc. most of the product fall under a common category.
- xx. Majority of imports have been reported without identifying whether the imported product is bone chine, porcelain or stone. The domestic industry also does not many a times specify whether the product being sold is bone china, porcelain or stone, which clearly shows that the producers may sell the product without specifying whether the same is of bone china, porcelain or stone.
- xxi. The import price clearly show that the price difference between imports of porcelain ware and ceramic ware is not materially different. Similarly, as against popular perception, the import price of stone ware is also quite comparable to porcelain ware. In fact, there are imports of porcelain ware and stoneware at a price materially higher than bone china.
- xxii. Cost of production of bone China or porcelain ware or stone wares does not differ significantly. In fact, the cost on account of bone china forms so low in terms of total cost of production that the resultant difference in cost of production of different types are extremely low.
- xxiii. Mere difference in shapes, style and sizes of different ceramic products does not mean that the products have different technical properties. Therefore the PUC should not be treated differently based on styles and sizes, the end use of all the products are same.
- xxiv. Subject goods are classified under Chapter 69 of Customs Tariff Act, 1975, under various Customs sub-headings such as 6911 10, 6911 90, 6912 00 etc. However, the

customs classification is indicative and is in no way binding on the scope of the proposed investigations.

- xxv. The subject goods produced by the Domestic Industry are identical to the product under consideration being imported into India and there is no difference in applicant's product and product under consideration exported from the subject country and the two 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. There is no significant difference in the subject goods produced by the applicant and those exported from the subject country and both are technically and commercially substitutable.
- xxvi. The claim of exporter regarding their quality being far superior is strongly refuted. There is no difference in the technology employed. Indian industry is fitted with best of the machines viz roller heads, auto cup plants and equipped with latest state of art, fuel efficient and environment friendly kilns. Kiln furniture, seggars, raw materials, China clay etc. of best quality is readily available. In fact, Indian produced Kiln furniture and raw material is so good in quality that it is being exported to various countries. Difference in quality is not a sufficient justification for exclusion of a product as has been held by the Designated Authority and upheld by the Hon'ble CESTAT in the matter of DSM Idemitsu Limited Versus Designated Authority.
- xxvii. The scope of the Product under consideration is not broad but similar as in other investigations such as Opal Glassware, Melamine products, Ceramic Insulators. Moreover, in the EU which conducted investigations in the same product defined the PUC in the similar manner.
- xxviii. As per WTO decision the Designated Authority is free to define the Product under consideration in a manner deemed appropriate and proper.
- xxix. If the imported goods are of better colours and designs or are more innovative, it should certainly have better prices than the domestic producers, but it is not so in the present case.
- xxx. The allegation of rejection of domestic products is completely baseless. Walmart still buys Ceramic tableware from the domestic producers.
- xxxi. Domestic Industry is manufacturing and supplying STUDIO pottery to many Indian Retail chains like Future Group (Big Bazar), Lifestyle, Good earth, Shoppers Stop etc.
- xxxii. Absence of reference to kitchenware in the initial authorization letter is a mere inadvertent typographical error. The word tableware and kitchenware are used interchangeably in day to day business in this trade. It is important to look at the intention of the petitioners and data and information that has been used in compiling the petition.
- xxxiii. As far as need for authorization letter for initiation of investigation is concerned the authorization letter is not even part of the application proforma and is not mandated by the proforma. It requires correctness and completeness of all the information provided, and the domestic industry very well provided all the information with regard to the information given by the domestic industry in the application proforma.
- xxxiv. The information given by the petitioners clearly establishes their intent and the product they were seeking anti-dumping duty. The information contained in the petition with

regards to imports, evidence of dumping, evidence of injury and costing information pertains to both tableware and kitchenware. The intention of Authorisation letter is to merely express request for anti-dumping duty. The defect was duly cured at the later stage and all the petitioners filed correct authorization letter.

- xxxv. Authorization letter is not the basis for initiating the investigation. Ultimately, the designated authority initiated investigation after sufficient prima facie examination of existence of dumping causing injury to the domestic industry. Moreover, the objection at such belated stage raised by the interested parties shows that the intention is merely to delay and cause impediments in completion of the present investigation.
- xxxvi. The petitioners have analysed entirety of imports (source – DGCI&S) and on the basis of its assessment have identified imports into PUC and NPUC. On specific comment made by the legal representative of the importers, the data has been relooked and rectified wherever needed. The difference is however so insignificant that the same does not lead to any material impact on the quantum of import volumes, import price, price undercutting, dumping margin, and injury margin.

Views of the opposing interested parties

6. The submissions of various opposing interested parties are summarized as follows:
- i. There is a huge quality difference between the product imported and supplied by the Domestic Industry. The quality of the PUC supplied by the domestic suppliers is not upto the mark.
 - ii. The product supplied by the Domestic Industry is very basic, whereas, imported products are all machine made and have far better finishing, there were many rejections on the goods supplied by the domestic supplier, and packing by the Domestic Industry is very poor.
 - iii. The domestic suppliers do not supply goods less than a truck which leads to increase in inventories and increases days of handling more than prescribed norms of Walmart.
 - iv. Reasons for importing goods from China
 - Quality concerns of the product supplied by Domestic Industry
 - Domestic suppliers do not have the availability of proper machinery
 - Non availability of goods quality cordierite, saggars, setters and nitride bonded silicon carbide kiln furniture.
 - Non availability of cheaper fuel like natural gas.
 - v. The Authority should provide a clarification on product scope. The product under Consideration is too broad and includes heterogeneous products. As per the transaction wise import data sanitary ware and toilet seat were considered as PUC.
 - vi. Spice mills and ceramic grinding parts should be excluded from the product scope because these mills are not used for standard tableware such as cups and plates. The domestic supplier are unable to provide “Studio Pottery” and hence should be excluded from product scope.
 - vii. Sublimation mugs, coated cup blank for heat press printing transfer (“image cup”) deserve to be excluded from the scope of PUC in the present investigation as it is

- layered with a chemical coating and processed further before qualifying as a finished product. It becomes a finished product only after an extensive customization process. It is used more as a gift than a regular kitchenware item. The export value of the “image cup” is one-third of China’s total export value, the actual value is achieved by processing in India. Therefore, the Anti-dumping duty would affect the industry.
- viii. Cookware should be excluded from the product scope because nowhere the petition or preliminary findings talk about inclusion of cookware. Most importantly the domestic industry has marked ceramic cookware as NPUC in the import statistics.
 - ix. Certain ceramic cookware made up of fireclay should also be excluded from the list of the product under consideration because the raw material is different, product characteristics are different, end use is different and there are no manufactures of fire clay in India.
 - x. The raw material used, the product characteristics and end-use of fire clay products are different. There is no manufacturer of a like or directly substitutable article in India. The domestic industry’s claim that they could manufacture fire clay products is also empty because they do not have access to the raw material required to manufacture fire clay cookware as the clay required to manufacture this product is not even available in India. The sample shown by the domestic industry during the public hearing was a terracotta cookware product and not a fire clay cookware product. In fact, both fire clay and terracotta cookware products are not part of the product scope. The domestic industry has not made fire clay cookware in the Period of investigation. It was accepted by domestic industry that they should be given 10 days’ time to manufacture it. This means that they have never produced the same in past and not during the Period of investigation. Nowhere in the petition is it said that imports of ceramic cookware is causing injury to the domestic industry and it is not mentioned under the scope of product under consideration.
 - xi. Porcelain should be excluded from the scope of product under consideration because the none of the manufacturers produce porcelain. One M/s Umberto Ceramics International Pvt. Ltd stated that they manufacture porcelain but they are neither the applicants nor the supporter of the present petition.
 - xii. The domestic industry majorly makes bone China and there is very less amount of porcelain manufactured by the domestic industry. On the other hand the imports are majorly being made for porcelain.
 - xiii. Subject goods made up of any other component except bone china, stone or porcelain ought to be excluded automatically from the scope of PUC. Tableware of which the main constituents are ball clay, calcium phosphate, quartz, kaoline or mixtures should be excluded from the scope of PUC.
 - xiv. The scope of the product under consideration has been expanded beyond the specific authorization issued by the applicants since the authorization issued by the applicant producers was only for seeking an initiation for "Ceramic Table Ware" and NOT for "Kitchen Ware".
 - xv. The investigation was initiated without proper authorization letter. The product of the scope was expanded from tableware to tableware and kitchenware, beyond proper authorization of the issued by the applicants.

- xvi. Several other producers presented the identical letter and supported the initiation of tableware not kitchenware.
- xvii. This initiation was not justified even if it was for only tableware because the authorization was given for tableware and data was provided for both tableware and kitchenware.
- xviii. The consultants could not have filed petition under rule 5 for tableware and kitchenware both when the authorization pertained only to tableware. *Mis. Nibro Limited vs. National Insurance Co. Ltd.*
- xix. The claim of the petitioners, that they have filed a revised authorization letter post issuance of preliminary findings, cannot cure the problem. The law does not permit filing of authorization letter post filling of the petition because it is supposed to be filed with the petition.

Examination by Authority

7. The product under consideration in the present investigation is defined as “Ceramic table wares and kitchen wares, excluding knives and toilet items” (hereinafter referred to as ‘subject goods’ or PUC).
8. It is noted that bone china, stoneware and porcelain-ware all constitute ceramic products and therefore the product under consideration includes kitchenware and tableware of bone china, stone and porcelain. Ceramic tableware and kitchenware products are used for the purpose of eating, drinking and serving food and beverages in homes and hotels.
9. The product under consideration is not produced in various specifications having any significant difference in the associated cost. Various types of the product, such as spoons, bowls, plates, etc. are produced from the mixture of calcium, quartz, feldspar and china clay. Production of different types merely implies forming this mixture into desired shape. Therefore, it is considered appropriate to classify all these items under a broad heading of “Ceramic Tableware and Kitchenware products”. There has been a similar kind of case for the product called “Opal Glassware of all types” and “Melamine Tableware and Kitchenware products”.
10. The opposing interested parties have disputed inclusion of some products and determination of volume and value of imports. It is noted that the petitioners have adopted the DGCI&S data and analysed the same. It is noted that the Chinese producers have not cooperated with the Authority. Had the Chinese producers cooperated, they would have provided more accurate information with regard to exports made to India. Govt. of China or the Chinese association or the importers have also not provided any information with regard to the total volume and price of imports of the product in India. In the absence of their cooperation, the DGCI&S data is the sole available information and the same has been adopted for the purpose.
11. As regards sublimation mugs, image cup (coated cup blank for heat press printing transfer), the authority notes that the same forms part of tableware and kitchenware. Further, the domestic industry has specifically stated that they are producing and selling these product types and the same was verified at the time of spot verification of the petitioner companies. Therefore, there is no justification for exclusion of sublimation/image cups from the scope of PUC.

12. As regards the Studio Pottery, the same are produced by the petitioner and they have submitted the evidence for supply of the same. As far as cook ware is concerned, the term cook ware could be interchangeably used as table ware or kitchen ware in trade parlance, there being no scientific methodology followed by the importers or traders in describing the product as cook ware or serve ware or kitchen ware or table ware. Therefore, the Authority decided that there is no reason to exclude Studio Pottery or cookware from the scope of PUC.
13. While demanding exclusions of some products, the interested parties have not provided any information how these products do not constitute tableware or kitchenware of ceramics. As the Chinese producers and exporters have not cooperated with the Authority, no specific technical material has been made available to segregate the products. In absence of objective scientific data for such differentiation, the Authority is not convinced with the demand of the importers, and hence request for exclusion is rejected.
14. The interested parties contended without providing any quantifiable and verifiable evidence that there is a huge difference in quality of Chinese and domestic industry product and the quality of the domestic industry product is not upto the mark. The authority notes that unless a quantified and verifiable claim is made, it cannot be established that the goods produced and sold by domestic industry are not like article to the imported product. Further, it is noted that the issue of quality has been considered by authority and CESTAT in the past and it has been held that quality is not a relevant consideration unless it is established that the product produced and supplied by the domestic industry is a like article to the imported product. Under the rules, the domestic industry is required to offer a like article to the imported product. It is also noted that the allegation of the domestic industry is with regard to the alleged dumping of the product and considering the estimates of normal value, the goods have been sold at a price below normal value and the imports were undercutting the domestic industry prices to a significant extent. If the product is of a higher quality, the imports need not have come at a price lower than domestic industry prices and need not have undercut the domestic industry prices.
15. As regards the contention that the domestic industry does not sell the goods below a truck load, authority notes that the same does not justify dumping and consequent injury to the domestic industry. In fact, Chinese goods are shipped in a container load. A container load material is far higher than a truck load material. If imports are being made in part container load, the consumers could have bought from the domestic industry as well in part truck loads. It is also noted that if goods are imported in container loads from China, the resultant inventories shall be significantly higher. Further, it is noted that this in any case cannot justify dumping by Chinese producers causing injury to the domestic industry.
16. The Authority has relied upon the letter given by CGCRI and has identified various producers of the subject goods in the organised sector and a number of producers in the unorganised sector. The production data of individual company shows that barring the petitioner companies, production of all other domestic producers is significantly low in proportion to Indian production. Further, none of the other Indian producers have provided information relevant to assessment of injury but have given support letters. No other domestic producer of the product has opposed the application. In the facts and circumstances of the case, authority considers that

31% share in Indian production is significant enough to constitute a major proportion of the total production in India.

17. As regards the contention that the petition is only for tableware, the authority notes that notwithstanding the typographical error in the letters accompanying the application, the petition in its relevant section clearly specified scope of the product under consideration as tableware and kitchenware of ceramics. Further, the investigation has shown that all relevant information such as imports of the product in India, Indian production, assessment of dumping margin, injury information, costing information in the petition all pertained to tableware and kitchenware of ceramics. Thus, merely because the letters from the petitioning companies requesting ADD states only tableware, it cannot be contended that the petition is only for tableware and did not include kitchenware. In particular, it is found that the domestic industry has produced and supplied significant volumes of kitchenware, the same is included in the various financial and injury data of the domestic industry and the same was verified at the time of physical verification. The physical verification at the premises of four petitioning companies clearly showed that these companies are producing kitchenware also.
18. Regarding the correct unit for measurement, the single largest unit used in import data from DGCI&S is weight. All the analysis has been done on the basis of weight. Further, it has been seen that more than 60% of the cost of the product is on account of raw material and utilities. The cost of the raw material and utilities is in direct proportion to the weight of the product; therefore, the cost of production is quite linear with weight of the product. Further, it is pertinent to mention that the European Commission earlier conducted an investigation against China, the perusal of the finding clearly show that scope of the product was same as that in the present investigation and the unit of measurement was also in terms of weight. The unit for collection of duty under Customs Act in the relevant HS code for the subject goods is also in terms of weight. The Authority has therefore, decided that the weight is the most appropriate unit of measurement for the present investigation.
19. Subject goods are classified under Chapter 69 of Customs Tariff Act, 1975. It is imported under various subheadings under HS code 6911 and 6912. However, the HS codes are indicative only and product description is the determining factor for the purpose of present investigation.
20. The PUC under the present investigation is “Ceramic table wares and kitchen wares, excluding knives and toilet items”. Bone china, stoneware and porcelain-ware all constitute ceramic products and therefore covered under the scope of PUC.

LIKE ARTICLE

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

“an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has the characteristics closely resembling those of the articles under investigation”.

22. As regards to the arguments by the opposing interested parties that the quality, design of the product manufactured by the Domestic Industry and those imported in to India being different,

it is noted that there is no quantified evidence provided by interested parties to show the alleged quality difference between the domestic and imported product. The authority notes that a difference in quality cannot be recognized, unless the differences are quantified and their impact demonstrated. The authority also notes the decision of the CESTAT in the matter of “DSM Idemitsu Limited v. Designated Authority”, reported in 2000 (119) E.L.T. 308, where the Tribunal held as follows

“As the plea of the appellants counsel is not convincing since he did not adduce any evidence/technical literature with reference to process of manufacture to show that product manufactured by the domestic manufacturers was different from that exported into India. Difference in quality will not make an article as different and Designated Authority was right in observing that the fact that qualities may be different, does not imply that the imported product and the domestic are not like articles.”

23. After considering the information on record, the Authority holds that there is no material difference in product under consideration exported from subject country and the product produced by the Indian industry. Product under consideration produced by the Domestic Industry is comparable to the imported subject product in terms of physical & chemical characteristics, production technology & manufacturing process, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable.
24. Thus, the Authority holds that product under consideration produced by the applicant Domestic Industry is like article to the subject product under consideration imported from subject country in accordance with the AD Rules.

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

View of the Domestic Industry

25. The Domestic Industry made the following submissions:
 - i. The petition is jointly filed by All India Pottery Manufacturers’ Association (AIPMA) and the Indian Ceramic Society (herein referred as petitioners/ petitioner associations) on behalf of domestic producers of the PUC in India. Some of the Indian Producers i.e. Clay Craft (I) Pvt. Ltd., Bharat Potteries Ltd., Ceramic Tableware Ltd. and U.P. Ceramics & Potteries P. Ltd. have the necessary detailed data relating to cost for investigation for imposition of anti-dumping duty on imports of Ceramic tableware and kitchenware, excluding knives and toilet items, originating in and exported from China PR.
 - ii. Besides the petitioners, some other Indian producers have supported the petition and support letter were duly filed by the these producers such as Yashvi Enterprise, Anil fine Ceramic, Samrat Ceramics, Raghuv eer (India) Limited, Marvel Ceramics Private Limited, Sea Shell Ceramics (India) Private Limited, Mudrika Ceramics (I) Ltd., Shan Tablewares Private Limited, Feather Touch Ceramics Private Limited, Oasis Ceramics Private Limited and Tata Ceramics.

- iii. All the petitioner companies have provided the required information. The petition clearly contains information with regard to imports made by petitioner companies if any. The said statement made in the application was verified by the authority. It has not been found that the statement made by the petitioning companies on this account were factually incorrect
- iv. The share of four petitioner companies is more than 30%. This alone is sufficient for filing the petition as per Rule 5(3). The petitioner is supported by the other Indian producers. The share of Indian producers, along with the supporters, constitutes more than 50%. The authority, the initiation notification, has stated the same.
- v. Requirement under the rules for the purpose of standing are – (a) the petition must be supported by 25%+ of eligible Indian production, (b) the petition must be supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application and (c) petitioners production should constitute “a major proportion”. Evidently, rules nowhere specify that the production of petitioners must be more than 25% of eligible Indian production. Support to the petition for more than 25% of eligible Indian production is much different from petitioners themselves commanding more than 25% production. Thus, the argument that the minimum threshold for petitioners is 25% is flawed. The threshold is with reference to support to the petition and not with regard to petitioners. There is huge number of unorganized sector in this industry and they are the one who are badly impacted by dumped imports. About 200 companies in India are producing the product under consideration on small scale and their operation is small as compared to organized sector.
- vi. Small scale industries don't have resources to provide information or contest in the present investigation. Authority in past in Sulphur Black had considered that the market share of domestic producers as a whole is equally important in determining injury.
- vii. The Authority ought to protect interest of those who cannot protect their interest due to lack of resources.
- viii. The producers of small scale don't maintain information required for filing the application for anti-dumping investigation. WTO has also recognized special regard that must be had to the unorganized sector. There is no segregated requirement for organized and unorganized sector in DGAD and that might have prevented them from giving relevant information.
- ix. It is not a case that production of product under consideration is in small scale only in India. In China too, more than 400 companies responded to the EU in response to the questionnaire on sampling.
- x. The interested parties have not shown that the production assessed by the petitioner is significantly different from what it should be for the present purposes. It is mere assumption by the interested party that petitioners actual production figure could be much higher.
- xi. The petitioners adopted a conservative approach and overestimated production of other producers in order to be safe that the production of petitioners crosses the 25%

- threshold. The real fact is that production of unorganized sector is much lower than what has been assessed by the petitioner.
- xii. Petitioners have not made any imports and nor are related (either directly or indirectly) to any exporter of product under consideration in the subject country or importers in India.
 - xiii. The supporters have supported the petition for imposition of anti-dumping duties on imports of Ceramic kitchenware and tableware from China PR which fulfils the requirement as per AD Rules. As per Rule 5(3), it is clearly mentioned that the support is required to the petition and not the petitioners filing the petition. It could be easily seen from the support letters that the other Indian producers have supported the petition for imposition of anti-dumping duty. Thus the legal requirement stipulated under Rule5(3) is fulfilled.
 - xiv. The letter from CSIR contains company by company details of production, as assessed by them. The interested parties admitted their inability to establish that the Indian production is materially different what is claimed by the petitioners during the first Oral Hearing. The interested parties have not provided any contrary information whatsoever to rebut the claims of the petitioners and they are merely allegations without any supportive evidence which cannot be taken into consideration. The obligation of the petitioners is not beyond information that is reasonably available to the petitioners as per Rule 5.
 - xv. The CSIR letter cannot be disputed. CSIR letter is only to supplement the claim made in the application. The petitioner is obliged to only provide information reasonably available to them. The interested party has not provided any contrary information whatsoever to rebut the claims of the domestic industry
 - xvi. Petition was filed as per the application proforma, which is fully consistent with Rule 5. Moreover, the information given by the petitioners clearly establishes their intent and the product they were seeking anti-dumping duties.
 - xvii. The letter from CSIR contains company by company details of production as assessed by them. During the public hearing the interested parties showed their inability to establish that the Indian production is materially different than what has been claimed by the petitioners.
 - xviii. All the petitioner companies have provided the required information. The petition clearly contains declaration with regard to imports by petitioner companies if any. The said statement made in the application was verified by the authority. It has not been found that the statement made in the petition on this account were factually incorrect.

View of the opposing interested parties

26. The submissions of various interested parties are summarized as follows:
- i. Producers who have been treated as domestic industry, have not filed necessary certification, which is required to be filed in all the investigation to examine pre-conditions of Rule 2 (b) to reach the conclusion of eligibility.
 - ii. The test of major proportion is to be done in context of the applicant industry that has provided their data and has provided information to support their claim. In the present

- case the test of major proportion is applied after adding total production of the supporting domestic producers. When 25% is the minimum requirement for filing application 31% cannot be called as major proportion of the total production in India.
- iii. The supporters have supported M/s. Bharat Potteries Pvt. Ltd., M/s. Ceramic Tableware Pvt. Ltd., & M/s. Clay Craft (India) Pvt. Ltd. whereas the present petition, as per the initiation notification is filed by All India Pottery Manufacturers' Association (AIPMA) and the Indian Ceramic Society, on behalf of the domestic industry and that too only for tableware.
 - iv. It was accepted by the petitioners in the public hearing that they don't have data for unorganized sector. So the actual production figure of the domestic industry is much higher than what is mentioned in the preliminary findings. If that is the case the share of the petitioner is not even more than 25% of the total Indian production.
 - v. The anti-dumping application is filed in clear violation of Rule 5 of the Ant Dumping rule. The support letters filed by various domestic producers cannot be relied on because on close perusal of the letters it can be seen that the support letter were filed for different anti-dumping investigation filed by different set of producers. On that account the applicants cannot be said to be the Domestic Industry. The investigation should be terminated on account of the fact that it has no express support from the industry.
 - vi. The applicants collectively constitute only 30% of the domestic producers, hence not eligible for Domestic Industry. Even if the total production of the applicants is more than 25% but that is relevant with regard to standing of the application and not for the purpose of defining the scope of the Domestic Industry. The Authority could have added other known domestic producers to understand the trend of the Indian producers as a whole.
 - vii. Production of PUC as a whole is considerably higher than 30,000 MT contrary to information given by CISR. CISR does not reflect the complete picture and the same was accepted by the Authority during the public hearing. Production data of PUC is not available with the Authority.
 - viii. During the hearing it was admitted by the DA that the total Indian production figure given by the CSIR is only an estimated figure and no exact figure of Indian production is available. Such flawed analysis of Indian production is strongly objected.
 - ix. If production details of the domestic industry are not known, it means that the records of the domestic industry are not reliable or adequate to quantify production of the domestic industry. It casts serious doubts as to how other figures of the petitioning companies such as sales, capacity, exports, cost of production, SG&A expenses, non-injurious price, etc. have been computed when the domestic industry does not seem to have reliable or adequate records demonstrating the above figures.
 - x. The production figures for the Applicant-producer as well as for the supporters do not support documentary evidence on records. On the contrary, the production figures of the Applicant-producer and the supporters as recorded in the preliminary findings differ from the information provided by the Applicant-producers in the non-confidential version ('NCV') of the Applications.
 - xi. The support letters enclosed in the NCV Application do not support the present application. The claimed support is not legible support to the present application as

there is no ‘express support’ to all applicants in the present Petition. None of the other domestic producers have supported the present application prior to the initiation and hence, the standing requirement cannot be said to be fulfilled in terms of Rule 5(3) of AD Rules. Moreover, in order to mislead the Authority, the Applicant in the present investigation has enclosed the same letters / Authorization (filed in the erstwhile application concerning tableware) for claiming support for the present application concerning tableware and kitchenware.

Examination by Authority

27. The petition has been filed by All India Pottery Manufacturers’ Association (AIPMA) and the Indian Ceramic Society (herein referred as petitioner associations) on behalf of domestic producers of the PUC in India. Some of the Indian Producers i.e. (a) Clay Craft (I) Pvt. Limited, (b) Ceramic Tableware Pvt. Ltd., (c) Bharat Potteries Ltd. and (d) M/s. UP Ceramics & Potteries Pvt. Ltd. (referred as petitioners/ petitioner companies) have provided the necessary costing and financial information. The petition has been supported by a number of other producers, namely, Yashvi Enterprise, Anil Fine Ceramic, Samrat Ceramics, Raghuvveer (India) Limited, Marvel Ceramics Private Limited, Sea Shell Ceramics (India) Private Limited, Mudrika Ceramics (I) Ltd., Shan Tablewares Private Limited, Feather Touch Ceramics Private Limited, Oasis Ceramics Private Limited and Tata Ceramics Limited.
28. The total Indian production has been estimated on the basis of data given by Central Glass & Ceramic Research Institute (CGCRI) set up under CSIR and the actual data of the petitioner companies. The Central Glass & Ceramic Research Institute (CGCRI) set up under CSIR have mentioned details of producers of the product in the organized sector as well as in the unorganized sector. In absence of any other credible source of information, the Authority considered it appropriate to accept Central Glass & Ceramic Research Institute (CGCRI) set up under CSIR data as a reliable source and due opportunity was also provided by the Authority to all the opposing interested parties to produce a reliable source for demonstrating the total production in India and no submissions were made by the opposing interested parties in this regard

Particulars	MT	Share in Indian Production %
	POI	POI
Petitioner as a whole	8,652	31%
Supporters as a whole	8,650	31%
Petitioner + Supporter as a whole	17,302	62%
Others	10,700	38%
Indian Production	28,002	100%

29. The petitioning companies have not imported the product under consideration from subject country nor are they related to any exporter or to an importer in India. The Authority has also verified the information provided by the domestic industry
30. As regards production data of unorganized sector, the authority notes that in view of absence of precise information with regard to production of individual companies in the unorganized sector, the petitioners cannot be denied relief under the law. Further it is noted that the production of

petitioner companies is significant. The Authority also notes that even in China, there are a large number of producers of the product in organized as well as unorganized sector. In earlier investigations by the Authority where the product under investigation were being produced both in organized and unorganized sector e.g. AA batteries, lead acid batteries, silk fabric and silk yarn etc., the production was determined based on the assessment as per the available credible relevant source of information in those investigations. Therefore, it is considered appropriate to accept the petitioners as the eligible domestic industry in terms of Rule 2 (b) of the Rules.

31. As regards the production of the petitioner domestic industry, it is clarified that the same has been appropriately, adequately and sufficiently quantified. The information submitted by the domestic industry was duly verified with regard to sales, capacity, exports, cost and expenses from the records maintained by the domestic industry. The financial and excise records maintained by the domestic industry have been adopted for the purpose which are reliable and adequately represent the relevant information.
32. As per the evidence available on record, the production of the petitioner companies accounts for a major proportion in the gross domestic production of the like article. The Authority, therefore, determines that the petitioner companies constitutes eligible 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 supra.

E. CONFIDENTIALITY

Views of the Domestic Industry:

33. The Domestic Industry made the following submissions
 - i. The Domestic Industry has claimed confidentiality as per the norms of the AD Rules and in fact the opposite interested parties have claimed excessive confidentiality and made it difficult to make proper comment on their submission.
 - ii. The information provided by any interested party to the authority on confidential basis cannot be disclosed to other interested parties. CSIR has claimed confidentiality on the information, the Authority has rightly not disclosed the said information. The interested parties have claimed certain documents as confidential and the same has not been disclosed to the Domestic industry.
 - iii. Very generic allegation has been made by the interested parties with regard to confidentiality. The interested parties have not been able to pull out any single instance where confidentiality was not allowed by the authority and the petitioners have claimed that information as confidential. Only highly business proprietary information has been kept confidential.

View of the opposing interested parties

34. The submissions of various interested parties are summarized as follows:
 - i. Excessive confidentiality is claimed by the applicants and has not provided information with regard to Production volume, Domestic Sales volume, Export Sales volume,

Inventory in volume, COP per unit in Indexed, Selling price per unit in Indexed (g) Profit/(Loss)per unit in Indexed (h) Employment, Productivity, ROCE in percentage, Proforma IV-B, Costing information and ROC version of financial results.

- ii. Not providing such information is completely against the confidentiality provisions provided under the Anti-Dumping Rules. Considerable information has been kept confidential without providing any justification for the same.
- iii. The CSIR letter to the Designated Authority based on which the Designated Authority has examined the standing of the applicants be provided to the interested parties without any delay. If the CSIR letter has been filed by CSIR in confidential form satisfying the requirements under Rule 7 of the AD Rules, the non-confidential version of the letter should be provided to Hamilton.

Examination by Authority

35. The Authority has examined the confidentiality claims of the interested parties. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).
36. The Authority noted the fact that the importers are already in possession of the said letter of Central Glass & Ceramic Research Institute (CGCRI) set up under CSIR regarding total production of the subject goods in India, which was obtained against an RTI request, as stated by them during the hearing. Further, the Authority decided to keep the Central Glass & Ceramic Research Institute (CGCRI) letter in the public file for inspection by all the interested parties.
37. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. Various discussions in this provisional finding are self-explanatory on the other contentions of the Domestic Industry on confidentiality aspect.

F. MISCELLANEOUS ISSUES

Views of the Domestic Industry:

38. The Domestic Industry made the following submissions
 - i. The Chinese exporters have not cooperated by not filing any information despite given an opportunity after initiation of the investigation. None of the exporters have filled exporter questionnaire.
 - ii. Chinese producers/exporters Association, responsible for assisting the exporters in defending their case in anti-dumping matters, have also not cooperated by providing

- detailed information pertaining to costing and exports. The Chinese Association should be considered as non-cooperative
- iii. The petitioners have adopted the DGCI&S import data, the same has been provided in the NCV copy of the petition. A large share of imports is in weight terms and the other units namely numbers/ pieces/sets have been converted into weight terms for effective analysis of whole of import data. Further PUC is transacted in weight terms at factory level. Therefore, the adoption of unit of measure as weight is appropriate and the opposite party has objected to the same without providing any alternative methods.
 - iv. The necessary costing/financial information has been provided by the petitioner domestic industry as prescribed under the law. The supporters who are also suffering the effects of dumping and have supported the petition are not specifically required to give their costing/financial data.
 - v. The export price from China PR has been determined as per the DGCI&S transaction wise data with due adjustments to the export price as per the market intelligence and standard practices.
 - vi. The prescribed unit of measurement for the PUC under Customs Tariff Act is weight. Therefore, if imports are now being reported in different units of measurements, it is improper on the part of these importers to report in the units other than the prescribed unit of measurement. The mere fact that the goods are sold in the market in sets or pieces is highly immaterial for the purpose. The unit of measurement defined in China Customs as weight only.
 - vii. In nature of various types of the PUC, reference price would be ineffective.
 - viii. The petitioners have analysed entirety of imports and on the basis of its assessment has identified imports into PUC and NPUC. It was open to the interested parties at the stage of initiation to bring relevant information on record or comment on the petition which could have been considered by the Authority while recording preliminary findings. However, the Authority may consider the same appropriately and record final findings.
 - ix. It is difficult to understand that how duty in USD/KG is inappropriate, if this form of duty was appropriate in elastomeric yarn, where different products had so different prices.
 - x. USD/Kg form of duty was appropriate in many other anti-dumping cases where different products had different prices.
 - xi. The present industry being a labor intensive industry, continued injury to the industry is impacting the large number of families who are dependent on these industries on day to day basis.
 - xii. It is important for the Authority to protect the interest of people who are incapable of protecting their interest themselves due to lack of resources.

Views of the opposing interested parties

39. The submissions of various interested parties are summarized as follows:

- i. The domestic producers have failed to provide their information despite having notice of the instant investigation, should be treated as non-cooperative under Rule 6 (8) of the Anti-dumping Rule.

- ii. The supporters, who have failed to provide information, show that they have only made unsubstantiated claim of injury before the Authority.
- iii. The Authority has acted in contravention of Article 12.1 of the Anti-Dumping Agreement because it failed to inform the interested parties before initiation that the Authority is satisfied and there are sufficient evidences to justify the initiation of the investigation.
- iv. The petitioners have failed to provide the sources of information relied upon for dumping and injury determination.
- v. The DGCI&S data in Excel format both in raw and refined form along with the methodology applied has not been provided.
- vi. The Domestic Industry wrongly segregated the Imports data. A major chunk of higher price entries relating to the subject country, which should have been part of the 'PUC' has been marked as 'NPUC' by the applicant. At the same time, there are entries which are marked as 'PUC' but are not a part of the definition of the product under consideration. In relation to the non-subject countries, the misrepresentation of the imports data is even more glaring the manipulation with regard to the non-subject countries has been done so as to bring down the volume of imports from the non-subject countries to project a better case of causal link, which otherwise is completely absent.
- vii. No investigation should be initiated unless the condition precedent in Article 5.4 of the Anti-dumping Agreement' is fulfilled. Moreover, the initiation of an investigation in the absence of a proper authorization is without the authority of law and cannot be continued.
- viii. The provisional duty imposed by the Authority on the subject goods is without authority of law as the provisional determination does not satisfy the requirements under Section 9B(1)(b)(iii) of the Customs Tariff Act, 1975. The Authority has not given any determination as to why this preliminary duty was imposed. Such determination is prerequisite before imposition of provisional duty.
- ix. Reference price be recommended for imports of bone china, porcelain and stoneware kitchen wares and table wares.
- x. The initiation of the present investigation as well as preliminary findings were not based on positive evidence and are therefore, bad in law since it was admitted and discussed that the production data provided by CISR does not reflect the complete picture of the investigation and has been wrongly relied upon. Authority during the course of the oral hearing also confirmed that neither the Government of India nor any other Association maintains accurate data concerning subject goods.
- xi. The duty in USD/Kg is absurd. The goods have diverse range in terms of costing, usage, application, manufacturing process as well as physical and chemical composition. USD kg would lead to inverse effect of duty, as the higher end products would attract very little duty and the lower end products would attract unreasonably higher duty.
- xii. Authority failed to fulfil the two conditions required for imposition of interim duty namely provisional duty with regard to dumping, injury and causal link at the time of period of investigation and second is injury during the injury period.

Examination by Authority

40. Various submissions have been made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed as follows:
- i. The Authority notes that the imposition of provisional duty were on account of the fact that Domestic Industry was in urgent despair and was going to be hit further by CANTON FAIR in China in the month of April, wherein buyers from international trade market participate and significant orders are placed, supplies arrive in India around July-October period. Thus if interim measures were not considered the industry would have lost the next season for product.
 - ii. The Authority notes that the application contained all information relevant for the purpose of initiation of investigation. The Authority after due examination decided to initiate the present investigation and had decided to revise the Period of Investigation to April 15-March 16. The revised application was sought, subsequent to initiation, and NCV was made available in public file.
 - iii. The Authority decided that it would be appropriate to express PUC in terms of weights because at import end as well as factory to dealer end the transactions are mainly done in weight terms. The cost of the raw material and utilities is in direct proportion to the weight of the product; therefore, the cost of production is quite linear with weight of the product. The majority of DGCIS data is available in weight terms and the balanced data available in numbers/sets/pieces has been converted into weight and all the analysis has been done in terms of Kgs.
 - iv. The Authority notified the Embassy of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra. Further, the Authority has issued a notification, published in the Gazette of India, extraordinary notifying the initiation of investigation.
 - v. As regards the argument that the other domestic producers have not provided the information or the supporters have filed the limited information, it is noted that as per AD Rules, the injury analysis has to be carried out on the basis of the information provided by the Domestic Industry. In the instant case, once it is determined that the petitioner companies constitute Domestic Industry, there is no legal requirements under the AD Rules to rely on the information of the other Indian producers.
 - vi. The legal consultant of the importer, who is well conversant with the procedures of DGAD, could have approached the Authority any time in case they wanted raw data. The Authority would have authorised them to collect it from DGCI&S as per their terms and conditions as was done for the petitioner's legal representative. Further, the Authority notes that the DGCI&S transaction by transaction wise data was in the public file being a part of the NCV petition.
 - vii. For the analysis data has been duly verified as deemed fit. Further, the various calculations for determination of NEP and landed value as mentioned in the subsequent paras has been carried out as per the methodology and standard practices followed in the Directorate on the basis of verified information.

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

Normal Value' under the Rules-

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

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

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

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

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

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

Views of the Domestic Industry:

42. The following are the submissions made by the Petitioner:
- i. China should be considered a non-market economy, in line with the position taken by the Authority in previous cases, and by investigating authorities in other countries. Chinese producers' cost and price cannot be relied upon for determination of normal value.
 - ii. Market economy status cannot be granted unless following conditions are fulfilled:
 - a. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity.
 - b. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values.
 - c. Market economy status cannot be given unless the responding exporter establish that their books are audited in line with international accounting standards.
 - d. Market economy status cannot be granted even if one of the parameters is not satisfied

- e. The onus/obligations to establish market economy status is onto responding Chinese exporters and not onto the Designated Authority.
 - f. Market economy status cannot be granted unless the responding company and its group as a whole make the claim.
 - g. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.
- iii. According to these Rules, the normal value in China can be determined on any of the following basis:
- the price in a market economy third country,
 - constructed value in a market economy third country,
 - the price from such a third country to other country, including India.
 - the price actually paid in India, adjusted to include a reasonable profit margin.
 - the price actually payable in India, adjusted to include a reasonable profit margin.
- iv. Since no questionnaire response has been filed by any of the Chinese companies, the subject country should be treated as non-market economy. The provisions of article 15 shall be fully applicable to the present case since the POI in the present case is April, 2015 – March, 2016, thus the normal value should be determined on the basis of Para-7 of Annexure-I. The weighted average cost of production of the petitioner companies at actual levels for determination of normal value is requested to consider.
- v. The export price from China PR has been determined as per the DGCI&S transaction wise data with due adjustments to the export price as per the market intelligence and standard practices.
- vi. The unit of measurement has been appropriately considered. Weight of the product is the prescribed unit of measurement under Custom Tariff Act and Excise laws. The mere fact that the goods are sold in the market in sets or pieces is highly immaterial for the purpose.
- vii. The Designated Authority has earlier recommended antidumping duty on imports of melamine ware and opal ware. No distinctions were considered in these products on such parameters as are being contended by interested parties now.
- viii. Since weight of the unit is the prescribed unit for imports and exports, in fact, imports should have been reported only on weight basis. The importers however for malafide reasons report the imports in units other than weight while clearing the goods.
- ix. Different product type cannot be segregated and separate dumping margin cannot be determined because there is no material difference between the cost of different products.
- x. No scientific methodology is available to segregate the import data into different product type, separate determination of dumping margin will at the least be highly misleading.
- xi. There is no basis for the argument that bone china has a higher cost as compared to porcelain. In fact, cost on account of bone china constitutes only a small portion of total

cost of production and therefore it is without any basis that the bone China product types have higher costs.

- xii. There are material variations in the export price claimed by the petitioner and the actual export price from China. The other interested parties can also assist the authority to segregate the data.
- xiii. The petitioners have relied upon import data provided by DGCI&S for determination of export price from China. The values reported in import data are CIF values.
- xiv. There are marginal difference in the data of the petition and in the preliminary finding because the quality and quantity of evidence improves as an investigation progresses.
- xv. The petitioners have analyzed in detail the complete DGCI&S data of imports, obtained on specific request. The same was examined transaction by transaction and thereafter the PUC and NPUC were identified by first examining the HS code and then the description of the products..

Views of the opposing interested parties

43. The views of the opposing interested parties are summarized as follows:

- i. Methodology adopted by the petitioners and envisaged by DA to determined normal value is in contravention to the provisions laid down under Para 7 of Annexure 1 of the AD Rules.
- ii. The determination of export price and adjustments therein, done to the export price have been made without any evidence.
- iii. Dumping and injury analysis for bone china, porcelain and stoneware should be done separately since bone china, porcelain and stoneware products are different from each other and articles based on each clay have different cost of production and command different prices in the market.
- iv. China was a non-market economy until 11th December 2016 is of relevance as the investigation has progressed into the year 2017. China should be regarded as a market economy now and normal value should be calculated for China based on the best facts available.
- v. The domestic industry has included both PUC as well as NPUC to inflate the import volume. The domestic industry has failed to show that imports of the PUC increase during July-October period. Further, there is no data to show that provisional duties were justified because imports of the PUC would have increased during July-October period
- vi. The segregation of import data by the applicants as to PUC and Non PUC are misleading and incorrect. Higher prices entries of PUC have been marked as NPUC by the applicants.
- vii. On perusal of the import data majority of the imports are made in number and sets. The preliminary findings say that 46% of the imports are done in weight basis. Evidently majority of the imports are not on weight basis.
- viii. The Authority should determine volume and values of subject good in pieces and not weight as a major proportion of imports (56%) are in pieces.

- ix. The methodology adopted for converting the pieces and sets into weight is not correct. The Authority has not appreciated that half of the sub-categories of subject good exported in units/pieces are not exported in weight.
- x. The import data includes wide range of tableware and kitchenware. The Authority has failed to consider the heterogeneous variety of PUC thereby setting an erroneous benchmark for other-subcategories of product under consideration reported in pieces only. The Authority has failed to determine the correct NIP based on this formula.
- xi. Further, the Authority should rely on data by Indian Customs Authority. The supporting domestic producers claiming injury should be included in 'domestic industry' as there is no legal reasoning for their exclusion.
- xii. The Authority failed to notify interested parties on being satisfied that there was sufficient evidence to initiate the investigation. *Argentina-Definitive Anti-dumping Duties on Poultry from Brazil*.
- xiii. Normal Value as determined in the present investigation is based on erroneous and false assertions of the domestic industry and does not adhere to the standards and evidentiary requirements as mandated under the AD Agreement and the AD Rules.
- xiv. Methodology of converting the volume of subject goods is absurd and fails to meet the standard of Article 3 of AD Agreement.
- xv. The Authority is requested to seek and rely on the data maintained by the Indian Custom Authorities concerning total volume of subject goods in weight as a unit of measurement.

Examination by the Authority

- 44. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/ exporters for rebutting presumption of nonmarket economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise the producers/exporters in their country to provide the relevant information. However, none of the Chinese producers/exporters have filed any response.
- 45. The Authority notes that none of the producers and exporters of the subject goods from the subject country have submitted the exporter's questionnaire response and market economy questionnaire response, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. In view of the above position, the Authority considers it appropriate to proceed with para-7 of Annexure I to the Rules for determination of normal value in case of China PR. As none of the producers/exporters from China PR has submitted MET questionnaire response, the Authority is unable to grant market economy status to Chinese producers for the purpose of determination.
- 46. In view of the fact that none of the producers/exporters has filed any exporter's questionnaire including MET questionnaire, MET status has not been accorded to Chinese producers.

Further, none of the interested parties, including the Domestic Industry, has made available any material fact to the Authority to select an appropriate market economy third country. The Authority has, therefore, determined the normal value in respect of China PR on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules.

Normal value determination for China PR

47. In view of the above, the normal value for the subject products imported from China PR into India has been determined on the "any other basis" by considering best available information with regard to cost of production and after reasonable additions for selling, general & administrative expenses and reasonable profit margin. The normal value has been constructed considering consumption of major raw materials conversion cost, interest, SGA, etc. at the levels allowed for the most efficient constituent of the Domestic Industry. 5% of cost of sales excluding interest has been added towards reasonable profit. Accordingly, the ex-works Normal Value of the product under consideration is as shown in the dumping margin table below.

Determination of Export Price for exporters from China PR

48. The Authority notes that none of the exporters have furnished information to the authority in the form and manner prescribed which could be used for determination of the export price and individual dumping margin. Therefore, the Authority has determine the export price for producers/exporters on the basis of the DGCI&S transaction wise data.

49. The export price has been adjusted on account of Ocean Freight, Marine Insurance Commission, Bank Charges, Port Expenses and Inland Freight Charges to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for exports from China PR is as shown in the dumping margin table below.

Determination of Dumping Margin

50. Based on the methodology explained above, the normal value, export price and dumping margin in respect of all producers/exporters of the subject country is determined as follows.

Particulars	POI	
	Rs/KG	\$/KG
Constructed Normal Value	154.74	2.35
Net Export Price	86.17	1.31
Dumping Margin	68.57	1.04
Dumping Margin - %	79.58%	79.58%
Dumping margin % (Range)	75-85%	75-85%

H. INJURY AND CAUSAL LINK

Views of the domestic industry

51. The following are the injury related submissions made by the Domestic Industry in brief;

- i. There is no demand supply gap in the country. Capacities with the domestic industry cannot be equated with demand in India. Indian capacity is required to be compared with Indian demand.
- ii. The domestic industry is not suffering because of their insufficiencies and mismanagement.
- iii. Decline in profit is not on account of depreciation, interest and labor cost. A detailed submission (Confidential version) with regard to same has been submitted to the Authority.
- iv. Capacity was only enhanced by one of the petitioner company namely M/s Bharat Potteries because it got an opportunity to acquire plant & equipment of an existing producer at a bargain price. Since the plant was acquired in the Period of investigation, this capacity was not taken while calculating the NIP and the working of NIP has been worked out based on projected financials at project conceptualization stage. This takes care of consistent low capacity utilisation by the Domestic Industry.
- v. The situation of the domestic industry has improved after the imposition of preliminary findings and Imposition of duty, especially during this period, was very much required to protect the legitimate interests of the domestic industry due to seasonality involved in the product. Considering the nature of product, significant sale happens during festive season
- vi. The preliminary findings should be finalized otherwise the domestic industry suffered material injury throughout the injury period and Period of investigation.
- vii. Production and sales of the domestic industry have increased over the injury period. However, this increase in production and sales volume is insignificant considering the level of capacities available and demand in the country.
- viii. The capacity utilization of domestic industry has been in the region of 45-50% during the injury period. This is too low level of capacity utilization.
- ix. Capacity has remained under-utilized in the injury period due to significant dumping being resorted by the foreign producers, resulting in lower volume of sales by Indian producers.
- x. Despite availability of sufficient domestic production capacity, consumers continued to meet their demand with dumped imports from the subject country resulting in sub-optimal performance in terms of volume parameters.
- xi. The profit, cash flow and return on capital employed has declined in the POI. Low priced dumped imports forced the Domestic Industry to reduce its prices despite increase in cost of sales during the period of investigation as compared to 2014-15. Thus the imports are depressing the prices of the domestic industry.
- xii. Market share of Indian producers as a whole, has declined; whereas market share of subject imports has increased significantly over the injury period.
- xiii. Inventories of the product under consideration with the domestic industry increased significantly over the injury period. The domestic industry is unable to sell its product even when the production level is sub-optimal.
- xiv. Growth of the Domestic Industry was however negative in respect of profits, cash profit and return on investment on year to year basis.

- xv. The volume of import of the subject goods from the subject country has increased significantly over the injury period. The subject imports have almost doubled from base year to proposed POI. Imports from China have increased significantly in relation to total imports, as well as consumption and production in India over the injury period.
- xvi. Market share of Domestic Industry has increased slightly; whereas market share of Indian producers has declined. On the other hand, market share of subject imports has increased significantly over the injury period. The domestic industry could not capitalize on the increase in demand.
- xvii. The subject imports are undercutting the domestic prices and price undercutting has increased over the injury period. Landed price of imports have remained significantly below the cost of sales of the Domestic Industry over the injury period;
- xviii. Landed price of imports have increased in 2013-14 and then declined over the injury period, whereas selling price of the Domestic Industry have increased up to 2014-15 and then declined in the POI succumbing to the price depression effect of dumped imports;
- xix. Production and sales of the Domestic Industry have increased over the injury period. However, this increase in production and sales volume is insignificant considering the level of capacities available and demand in the country.
- xx. Capacity has remained under-utilized in the proposed injury period due to significant dumping being resorted by the foreign producers, resulting in lower volume of sales by Indian producers.
- xxi. Despite availability of sufficient domestic production capacity, consumers continued to meet their demand with dumped imports from the subject country resulting in sub-optimal performance in terms of volume parameters
- xxii. Profitability increased during the injury period. However, there was a significant drop in the Period of investigation as compared to the previous year. Similar trend were followed in performance of the Domestic Industry with regard to profit, cash flow and return on capital employed. However, the inventories increased and the cost of sales increased putting a pressure on the health of the domestic industry.
- xxiii. Market share of imports from other countries has remained very low throughout the proposed injury period whereas market share of subject imports has increased significantly over the injury period. Market share of imports from other countries has remained very low throughout the proposed injury period.
- xxiv. Productivity of the Domestic Industry, measured in terms of production per employee has increased. The level of employment with the Domestic Industry has increased up to 2013-14 and then declined. Wages have increased up to 2014-15 and then declined in the proposed POI.
- xxv. Inventories of the product under consideration with the Domestic Industry increased significantly over the injury period.
- xxvi. Growth of the Domestic Industry in terms of volume and price parameters has remained sub-optimal. Both dumping margin and injury margin in the proposed POI are positive and significant.
- xxvii. Indian Industry has sufficient capacity to cater to the Indian demand. But Indian industry is unable to improve capacity utilization due to presence of dumped imports.

Demand supply gap cannot justify dumping. The foreign producers should not dump the goods in order to meet Indian demand.

- xxviii. The opposite party is pointing out the demand supply gap and on the other hand raising questions on enhancement of capacity. The capacity was enhanced because the demand increased throughout the injury period.
- xxix. The injury is due to dumped imports because the volume of dumped imports have captured the market share of the Domestic Industry, undercutting prices, price depression, deteriorated profit, has prevented the industry from increasing its production, sales, capacity utilization. Growth parameters have been affected negatively.
- xxx. The marketing channel of the subject good is such that the domestic producers need to sell the product through large network which makes it impossible for them to reduce the price of the good and if the Chinese imports are cheaper then it will obviously attract more consumer resulting into more imports. It is not the eventual consumers who are getting benefitted with so significantly low priced imports.
- xxxi. The opposing interested parties have not pointed out other reasons which can cause injury to the Domestic Industry.
- xxxii. The allegation of price hike is baseless. The question is how many time price hikes are accepted by Walmart. The Domestic Industry claimed price increase based on inflationary trend of varied cost factors and exchange rate fluctuations in prices of raw material, that too, once in a year or two years.
- xxxiii. There are no material differences in the cost of the products. The exports have not filed questionnaire responses and no scientific methodology is available to segregate the import data into different product type, in view of this, separate determination of dumping margin will be highly misleading.

Views of the opposing interested parties

52. The submissions of various interested parties considered relevant by the Authority are summarized as follows;
- i. There is no volume injury to the applicant as the sale of applicant-producer has increased over POI by 7.5% however, the sale of other producers have decreased by 23%.
 - ii. The inventory, ROCE determined by the Authority in the preliminary findings is contrary to what information was provided by the petitioner.
 - iii. There is no price suppression/depression on account of imports as net sale realisation is higher in comparison to cost of sale of a subject good.
 - iv. Authority is requested to disclose the methodology used to calculate NIP and rate of return for calculating NIP.
 - v. The capacity was expanded despite the demand for the subject good has remained constant during the Period of investigation, also the existing production capacity (below 50%). The injury suffered by the applicant is to be attributed towards an escalation of cost and not due to imports.

- vi. Authority is requested to accept price-undertaking given by CCCLA, as price undertaking by interested parties were duly accepted in other cases.
- vii. Authority should consider small scale Chinese producers. Also, the reference price is requested in case price undertaking by CCCLA is not accepted.
- viii. The NIP is determined incorrectly. There are three products and all three are not only different in terms of composition but also in terms of their costing, marketability, pricing, weight etc. the difference can be easily seen from the catalogue and price list of the products.
- ix. The domestic industry is suffering losses on account of their insufficiencies and mismanagement. Debottlenecking done by the domestic industry has gone wrong and there is decrease in profit in the same period when debottlenecking was acclaimed.
- x. Depreciation increased and interest and wages have increased in 2012-13, accordingly appropriate adjustments should be made due to significant increase in the costs in the form of depreciation, interest and labor cost while assessing the injury, causal link as well as for the computation of NIP.
- xi. Mere increase in imports and price undercutting is not sufficient to determine injury. It needs to be proved that such imports have negative impact on the domestic industry.
- xii. The domestic industry is not suffering any injury as there is increase in production and sales. The domestic industry remains profitable with high ROCE and market share of the domestic industry has remained stable throughout the injury period.
- xiii. Price undercutting and price suppression has no adverse impact on the domestic industry and it has remained profitable.
- xiv. The Authority has not given any determination as to why this preliminary duty was imposed. Such determination is prerequisite before imposition of provisional duty.
- xv. The domestic industry had been able to increase its profit despite increase in imports, hence proves no causal link.
- xvi. There is no volume injury to the Domestic Industry. The demand of the subject goods have increased by 3% in the Period of investigation however the sale has increased by 12% in the Period of investigation. The industry has performed exceptionally well in terms of domestic sales. The applicants have been able to sell 93% of their total production in Period of investigation. Hence suffering no injury. The domestic producers are unable to meet the domestic demand for the subject good. The import of the subject good has increased to the extent of decrease of sale of the other domestic producers. Imports were made to bridge the demand supply gap. The domestic producers are suffering injury due to inefficiency of filling the demand supply gap in the domestic market.
- xvii. The producer whose performance has deteriorated has not assisted the Authority in arriving at a fair determination by not providing the requisite data/information. There is no injury to the other producers of the domestic market and they are performing exceptionally well but they have not been included under the list of domestic producers.
- xviii. There is no price injury. The methodology adopted by the applicants to arrive at the weight of the subject good exported in units/pieces and the consequent price of the dumped article is flawed. There is no price suppression or depression on account of

imports. The net sales realization of the applicant is higher in comparison to the cost of the subject good.

- xix. The applicants have been able to increase their selling price as compare to the increase in the cost of the price. There is a price hike every six months
- xx. Working capitals of the applicants have almost doubled during the injury period. Such increase in working capital is unreliable and unsubstantiated.
- xxi. There is no causal link between the alleged dumping and injury to the domestic market. The applicants have enhanced capacities anticipating increase in demand but the demand remained constant during the examination of injury period. The applicants have failed to provide any evidence to show that the Domestic Industry is suffering injury due to alleged dumping. The material injury or threat of injury to the domestic injury is based only on allegation, statement or conjuncture
- xxii. There have been instances where domestic suppliers have delivered good less than what was ordered and were not able to supply goods to Wal-mart within the prescribed period.
- xxiii. As per the information provided by the DI in the petition the market shares of the Domestic Industry increased by 24% in the Period of investigation. Demanding anti-dumping duty on the ground that increase in demand is slow is completely unwarranted and unjustified.
- xxiv. The production of the petitioners has increased steadily during the Period of investigation and domestic sale has also increased. There is slight decline in the capacity utilization but that is not due to the alleged dumping but on account of increased installed capacity. Petitioners have moved from being loss making in 2012-13 to being hugely profitable units from 2013-14 onwards to the Period of investigation. The wages have increased during the Period of investigation. There are none of economic factors appear to have been adversely affected directly on account of alleged dumping of the PUC in India.
- xxv. The installed capacity of the applicants was low as compare to the demand in the domestic market. Imports were made to meet the deficit arising out of demand supply gap.
- xxvi. The domestic industry is performing well and earning profits. Mere price undercutting is not sufficient to determine injury to the domestic industry. The profits of the domestic industry have increased during POI as compared to base year. There is no causal link between the alleged dumped imports and injury to the domestic industry.
- xxvii. The production and capacity utilization figures recorded in the preliminary findings are unsubstantiated and contrary to the figures / data provided by the applicants.
- xxviii. The data/information provided by the Applicants for the initiation of the investigation was grossly incorrect.
- xxix. Domestic Industry in its post hearing written submissions has provided import data concerning imports of subject goods on monthly basis and claimed surge in imports during July-October which cannot be relied upon as it only reflects the value of imports of the subject goods and not the volume. Furthermore, the import value of subject goods during the POI as per the domestic industry does not reconcile with the value as is recorded in the preliminary findings.

- xxx. The Authority is requested to accept the price undertaking as furnished by CCCLA.
- xxxi. The methodology adopted for fair comparison and the computation of the NIP is wholly incorrect. The Authority ought to have computed separate NIPs for bone china, porcelain and stoneware products and compared them to the corresponding imported products for arriving at the injury margin

Examination by the Authority

- 53. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury. The issues raised by various interested parties have been dealt with in the relevant paras of this Final Finding.
- 54. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties.
- 55. As regards the contention that the Domestic Industry does not have sufficient capacity to meet the demand of product under consideration in the country, the authority notes if there is a demand supply gap in the country, the foreign producers can certainly fill the gap in the country by bringing the product at a fair price. Demand supply gap does not justify dumping of the product.
- 56. For the purpose of injury analysis the Authority has examined effect of dumped imports of the subject goods on the Domestic Industry and its effect on all relevant economic factors and indices having a bearing on the state of industry to evaluate the existence of injury and causal links between the dumping and injury, if any.

i. Volume Effect of the Dumped Imports on the Domestic Industry

a. Import volumes

- 57. The authority has relied upon import data procured from DGCI&S in the present investigation. The Authority has considered weight as an appropriate unit of measurement. The examination of data received from DGCIS revealed that about 46% of the total transactions in POI are those where import volumes have been reported on weight basis. However, the balance imports are in various other units namely numbers, sets, dozens, pieces and Kgs. The import transactions on weight basis have been adopted as it is for analysis. The per unit average import price has been determined by considering the import value and volume of the transactions reported on weight basis. The per unit average import price, so determined is considered while converting those transactions which are reported in units other than weight, into weight thereby 100% of the reported import transactions have been considered for analysis. Imports volume from subject country were as under:-

Imports	Unit	2012-13	2013-14	2014-15	2015-16
China	MT	5,519	6,596	9,114	10,160
Other Countries	MT	849	972	810	836
Total Imports	MT	6,368	7,568	9,924	10,996

- 58. It is seen that imports from subject country have increased consistently and significantly in absolute terms over the injury period.

b. Demand and market share

59. The demand/apparent consumption of subject goods has been determined by adding domestic sales and import of subject goods from all countries.

Demand	Unit	2012-13	2013-14	2014-15	2015-16
Sales of Domestic Industry	MT	7,791	7,870	7,948	8,375
Sales of Other Indian Producers	MT	19,752	18,361	16,795	15,269
Sales of Indian Producers	MT	27,543	26,231	24,743	23,644
Imports from China	MT	5,519	6,596	9,114	10,160
Other Countries – Imports	MT	849	972	810	836
Demand/consumption	MT	33,911	33,799	34,667	34,640
Market Share in Demand					
Domestic Industry	%	22.97%	23.29%	22.29%	24.18%
Other Indian Producers (including supporters)	%	58.25%	54.32%	48.45%	44.08%
Indian producers as a whole	%	81.22%	77.61%	71.37%	68.26%
China	%	16.28%	19.52%	26.29%	29.33%
Other Countries	%	2.50%	2.87%	2.34%	2.41%

60. The Authority notes that the demand for the product under consideration has remained consistent and has marginally increased during POI as compared to the base year and also showing an overall positive trend over the entire injury period. Whereas the demand for the product under consideration increased by 2% from base year, imports from China increased by 84% over the same period.

61. The statistics show that share of imports from subject country in Indian demand increased from 16% to 29% over the injury period. The market share of Domestic Industry has remained almost consistent but the market share of the Indian industry as a whole has declined significantly.

ii. Share of dumped imports in relation to production

62. Authority observes that the imports from subject country have increased in relation to production in India as shown below:

Particulars	Unit	2012-13	2013-14	2014-15	2015-16
Imports from China	MT	5,519	6,596	9,114	10,160
Total Imports	MT	6,368	7,568	9,924	10,996
Production of the Domestic Industry	MT	8,128	8,313	8,364	8,652
Indian Production	MT	30,510	30,069	28,283	28,002
Share of subject country imports in relation to					
Domestic Industry Production	%	68%	79%	109%	117%
Indian Production	%	18%	22%	32%	36%

a. Imports in relation to total imports

63. Imports of the product under consideration from subject country have increased in relation to total imports into India.

Imports	Unit	2012-13	2013-14	2014-15	2015-16
China	MT	5,519	6,596	9,114	10,160
Other Countries	MT	849	972	810	836
Total Imports	MT	6,368	7,568	9,924	10,996
Share in Total Imports					
China	%	87%	87%	92%	92%
Other Countries	%	13%	13%	8%	8%

64. It is, thus, concluded that the share of imports from subject country have captured the market share and increased both in absolute terms and in relation to production and consumption in India

I. PRICE EFFECT OF DUMPED IMPORTS ON THE DOMESTIC INDUSTRY

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

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

66. It has been examined whether there has been a significant price undercutting by the dumped imports 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. The impact of dumped imports on the prices of the Domestic Industry has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any.

Price Undercutting

67. In order to determine whether the imports are undercutting the prices of the Domestic Industry in the market, the Authority has compared landed price of imports with net sales realization of the Domestic Industry. In this regard, a comparison has been made between the landed value of the product and the average selling price of the Domestic Industry net of all rebates and taxes, at the same level of trade. The prices of the Domestic Industry were determined at the ex-factory level.

Particulars	Unit	2012-13	2013-14	2014-15	2015-16
Landed price of imports	Rs./KG	119	120	115	102
Net Sales Realization	Rs./KG	***	***	***	***
Price Undercutting	Rs./KG	***	***	***	***
Price Undercutting (%)	%	***	***	***	***
Price undercutting (Range)	%	20-30	30-40	40-50	60-70

68. The Authority notes that the landed price of imports from the subject country was lower than the selling price of the Domestic Industry, thus resulting in significant price undercutting, which is increasing during the entire injury period and POI.

Price Underselling

69. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been determined considering the cost of production of the Domestic Industry for the product under consideration during the POI, in accordance with Annexure III of the Anti-dumping Rules.

Particular	2015-16	
	Rs/KG	\$/KG
Non Injurious Price (NIP)	***	***
Landed Price	102.45	1.55
Price underselling	***	***
Price underselling-%	***	***
Range	65-75%	65-75%

70. The Authority notes that the landed price of the subject goods from the subject country is significantly lower than the NIP determined for the Domestic Industry showing significant price underselling effects.

a) **Price suppression/depression**

Price suppression/depression

71. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority examined the changes in the costs and prices over the injury period as below:

Particulars	Unit	2012-13	2013-14	2014-15	2015-16
Landed price of imports	Rs./KG	119	120	115	102
Trend	Indexed	100	101	97	86
Net Sales Realization	Rs./KG	***	***	***	***
Trend	Indexed	100	108	117	114
Cost of Sales	Rs./KG	***	***	***	***
Trend	Indexed	100	104	112	112

72. It is seen that landed value of imports have remained significantly below the level of cost of sales and selling price of the Domestic Industry throughout the injury period. Low priced dumped imports forced the Domestic Industry to not increase the selling price to remunerative levels despite increase in cost of sales during the entire period. Thus the imports are depressing the prices of the Domestic Industry throughout the injury period

Economic parameters of the Domestic Industry

73. Annexure II to the Anti-dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or

utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the Domestic Industry are discussed below.

a. Capacity & Capacity Utilization

74. Capacity and capacity utilization of the Domestic Industry over the injury period is given in the following table:-

Particulars	Units	2012-13	2013-14	2014-15	2015-16
Capacity	MT	17,120	17,120	17,120	19,220
Production	MT	8,128	8,313	8,364	8,652
Capacity Utilization	%	47%	49%	49%	45%
Domestic Sales	MT	7,791	7,870	7,948	8,375

75. It is observed that:

- i. Domestic Industry has enhanced its capacity during period of investigation, in view of the increase in demand. Demand for the product under consideration increased over the injury period. It is thus seen that the enhancement in capacities by the Domestic Industry was commensurate with the increase in demand for the product in the Country.
- ii. Production and sales of the Domestic Industry increased over the injury period, however, the petitioner is suffering significant unutilized capacities.
- iii. Capacity utilization of the Domestic Industry has suffered as a result of the inability of the Domestic Industry to increase its market share.

b. Inventories

76. The position of inventories noted as average stock with the Domestic Industry moved as follows;

Particulars	Units	2012-13	2013-14	2014-15	2015-16
Average Inventory	MT	***	***	***	***
Trend	Indexed	100	102	110	125

77. It is noted that inventories with the Domestic Industry have increased significantly over the injury period. The rate of increase in inventories was more than the rate of increase in production.

c. Profit/Loss

78. The profitability of the Domestic Industry is given in the following table:

Particulars	Units	2012-13	2013-14	2014-15	2015-16
Cost of sales	Rs/KG	***	***	***	***
Trend	Indexed	100	104	112	112
Selling price	Rs/KG	***	***	***	***

Trend	Indexed	100	108	117	114
Profit/(Loss)	Rs/KG	(***)	***	***	***
Trend	Indexed	(100)	500	700	100
Profit/(Loss)	Rs.Lacs	(***)	***	***	***
Trend	Indexed	(100)	731	1,059	106
Cash Profit	Rs.Lacs	***	***	***	***
Trend	Indexed	100	265	355	217
Profit before Interest and Tax	Rs.Lacs	***	***	***	***
Trend	Indexed	100	184	240	160

79. It is seen from the above information that:

- a. The profitability of the Domestic Industry with respect to domestic sales of the product concerned increased till 2014-15 but deteriorated significantly during POI. The decline in profits of the Domestic Industry during 2015-16 is very significant as compared to 2014-15.
- b. The production, sales and profitability increased over the entire injury period, however, during POI profitability declined in spite of an increase in production and sales.

d. Return on capital employed

80. The returns on investment, PBIT and cash flow have followed the same trend as that of profitability i.e. it increased during the injury period but declined in POI as compared to the previous year.

	Unit	2012-13	2013-14	2014-15	POI
Return on Capital Employed	%	***	***	***	***
Trend	Indexed	100	184	211	107

e. Employment and Wages

81. The employment and wages are below:

Particulars	Units	2012-13	2013-14	2014-15	2015-16
No of Employees	Nos.	***	***	***	***
Trend	Indexed	100	107	101	100
Wages	Rs. Lacs	***	***	***	***
Trend	Indexed	100	104	110	121
Wage per unit	Rs/MT	***	***	***	***
Trend	Indexed	100	101	107	111

82. It is seen that the employment has generally remained at the same levels. Wages paid have increased during period of investigation.

f. Growth

83. The growth of various factors was worked for the injury period and POI with 2012-13 as the base year for this comparison. The Authority notes that the growth of Domestic Industry was positive in terms of sales and production on year to year basis. However, growth of the

Domestic Industry was however negative in respect of profits, cash profit and return on investment on year to year basis.

Growth (Year by Year)	Units	2013-14	2014-15	2015-16
Production	%	2%	1%	3%
Domestic Sales Volume	%	1%	1%	5%
Cost of sales	%	4%	7%	1%
Selling price	%	8%	8%	-3%
Profit/Loss per unit	%	819%	43%	-91%
Cash Profits	%	165%	34%	-39%
Return on Capital Employed	%	5%	2%	-6%

g. Ability to raise capital investment

84. The Authority notes that the Domestic Industry enhanced capacities during period of investigation and made fresh investments. The Domestic Industry contended that given the level of demand and number of producers of the product under consideration in the market, it is evident that there is significant scope for further investment in the product in the Country. However, the existing producers are staying away from significant capacity addition and new players are not joining for the reason that the existing capacities itself are remaining unutilized.

h. Level of dumping & dumping margin

85. The Authority notes that the imports from the subject country are far above the de minimis level of dumping margin. The dumping margin for subject country is quite significant.

J. CONCLUSIONS ON INJURY

86. Based on the above, the Authority concludes that the dumped imports of the subject goods from the subject country have increased in absolute terms as well as in relation to production and consumption of the subject goods in India. Imports of the product are undercutting the prices of the Domestic Industry in the market. Further, the imports were depressing the price of the Domestic Industry. It is observed that the demand for the product increased significantly and consequently production and sales of the Domestic Industry also increased, however, performance of the Domestic Industry deteriorated in respect of capacity utilization, inventories, profits, cash flows and return on investments.

87. The Authority noted that the Domestic Industry has suffered injury on account of volume as well as price effect of dumped imports, as a result of which the profitability of the Domestic Industry has declined. Return on capital employed and cash profits followed the same trend as that of profits. Growth of the Domestic Industry in respect of most of the parameters such as profits, cash profits, returns on capital employed, etc. was negative. Thus, Authority concludes that the Domestic Industry has suffered material injury.

K. CAUSAL LINK AND NON ATTRIBUTION ANALYSIS

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

(a) Volume and prices of imports from third countries

89. The imports from the countries other than the subject country are not significant in volume terms so as to cause or threaten to cause injury to the Domestic Industry. Imports from other countries accounted for less than 3% in total imports and 2% of total demand/consumption in India. Thus, it cannot be said that imports from other countries are causing injury.

(b) Trade restrictive practices and competition between the foreign and domestic producers

90. It is noted that there is a single market for the subject goods where dumped imports from the subject country compete directly with the subject goods supplied by the Domestic Industry. It is also noted that the imported subject goods and domestically produced goods are like article and are used for similar applications/end uses. There is no evidence of trade restrictive practices and competition between the foreign producers and domestic producers causing injury to the Domestic Industry.

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

91. The Authority notes that demand for the product showed increase during the injury period and also during the POI as compared to base year. Thus, it can be concluded that the injury to the Domestic Industry was not due to contraction in demand.

(d) Development in Technology

92. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the Domestic Industry.

(e) Export performance of Domestic Industry;

93. The Domestic Industry is primarily for sale of goods in the domestic market. However, the domestic sales and export performance has been separately analysed. It is clear that claimed injury to the Domestic Industry is not on account of any significant change in export performance of the Domestic Industry.

(f) Productivity of the Domestic Industry

94. The Authority notes that the deterioration in productivity has not caused injury to the Domestic Industry.

(g) Performance of the Domestic Industry with respect to other products

95. The Authority notes that the performance of other products being produced and sold by the Domestic Industry has not affected the Domestic Industry's performance. The information considered by the Authority is with respect to the product under consideration only.

L. FACTORS ESTABLISHING CAUSAL LINK

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

- i. Imports of the subject goods have increased in absolute terms over the entire period of investigation. Imports of the PUC from the subject country have increased in absolute terms. Also, the landed price of imports has been declining significantly over the injury period and through the POI.
- ii. Imports of the subject goods have increased relative to production and consumption in India.
- iii. Market share of dumped imports in total demand in India remained at about 30% during the Period of investigation which is a significant percentage. The Indian producers could capture only 68% of the demand in spite of having sufficient capacities. This is due to the reason that imports have aggressively captured the robust demand in India.
- iv. The Domestic Industry has not been able to increase its production and sales commensurate with the increase in demand. The Domestic Industry had significant unutilised capacity in the POI even though the demand had increased.
- v. Inventories of the Domestic Industry have been on the rise, as the Domestic Industry has not been able to increase its sales despite increase in demand. Imports have been aggressively capturing the demand in India.
- vi. There is significant price suppression and depression due to low priced dumped imports coming in to India.
- vii. The Domestic Industry's profitability and return on capital employed have been drastically affected. This is evident from the fact that the Domestic Industry was earning decent profits and return on capital employed till 2013-14. However, especially during the POI, the profits and returns have turned into huge losses and negative situations.
- viii. The above analysis indicates that the Domestic Industry is suffering material injury due to increasing dumped imports of PUC into India from subject country. There exists a strong causal relation between the increase in dumped imports of the subject goods originating in or exported from subject country and the material injury suffered by the Domestic Industry.

M. MAGNITUDE OF INJURY AND INJURY MARGIN

97. The Authority has determined non-injurious price for the Domestic Industry on the basis of principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject country. The injury margin so determined is significant.

Particulars	Rs/Kg	USD/Kg
Non Injurious Price (NIP)	***	***
Landed Price	102.45	1.55
Injury Margin	***	***
Injury Margin-%	***	***
Injury Margin (Range)	65%-75%	65%-75%

N. POST DISCLOSURE COMMENTS

98. The post disclosure submissions have been received from the interested parties. The issues raised therein have already been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity the submissions by the interested parties are being examined as below:

Views of the Domestic industry

99. The Domestic Industry made the following submissions:

- i. The PUC is ceramic tableware and kitchenware. Bone china, stoneware and porcelainware constitute ceramic product and therefore appropriately covered under the scope of Product under consideration. Different types of ceramic tableware, kitchenware, cookware, serve ware etc. are not different and constitute one article; and it would not be appropriate to exclude a product type, if the domestic industry is manufacturing like article to the product being imported into India;
- ii. The Authority has rightly rejected exclusion of Sublimation/image cup and fire clay kitchenware as the same are being produced by the domestic industry.
- iii. The authority is requested to kindly give complete clarity on the fact that bone china, porcelain and stone ware fall under “ceramics product” and kitchenware, serve ware, table ware, etc. are merely different terms used interchangeably in the trade parlance in order to avoid any issue in implementation.
- iv. Authority may kindly specify in duty table that the product under consideration should attract duty regardless of the customs classifications under which goods are being cleared by the importers. Further, the authority may kindly specify in duty table that the customs classification is indicative only. It is only the duty table contents that are relevant in this regard. Anything mentioned in the para relating to "product under consideration" but not stated in duty table is likely to get ignored while issuing notification by the Ministry of Finance. Further, the Customs authorities at the port consider and rely upon the notifications issued by the MOF. The customs authorities do not take cognizance of the notification issued by the DGAD as final findings. It is, therefore, utmost important that the duty table itself includes all these clarifications.
- v. The petitioner companies account for a major proportion in the gross domestic production of the like article and constitutes eligible Domestic Industry within the meaning of Rule 2 (b) of the Anti-Dumping Rules.
- vi. The letter issued by CGCIR holds good and contained information with regard to both organized and unorganized companies. In the absence of specific information with regard to unorganized sector, the right of the organized sectors cannot be defeated.
- vii. The dumping margin and injury margin is quite significant.
- viii. The form of measure is required to be kept as fixed quantum and expressed in US Dollar.
- ix. The Authority is requested to affirm the preliminary finding.

Views of the opposing interested parties

100. The submissions of various opposing interested parties are summarized as follows:

- i. Cookware products should be excluded from the product scope since it is incorrect to say that terms kitchenware, tableware and cookware are used interchangeably in trade parlance. The authority should examine two-way substitutability of products i.e. in case of *Sodium Tripoly Phosphate*. Cookware products can be used for cooking and may be used for serving food and beverages but kitchenware and tableware cannot be used for cooking. Moreover, DGCI&S data provided by the petitioners itself specifically 'ceramic cookware' as NPUC. The Authority has relied upon the import data of the petition for preliminary findings and for disclosure, which excludes ceramic cookware from PUC. There is no change in import volume or value in the preliminary findings and disclosure statement from the import volume and value provided in the petition. Thus there is no analysis or determination that cookware products are being dumped or causing injury. The entire dumping and injury analysis in the petition, preliminary findings and the disclosure statement has been done based on the understanding that ceramic cookware was not a part of the import data. It is clear that once a scope of the product should not be expanded during the course of investigation. Therefore, the Authority should specifically provide that cookware products are excluded from PUC.
- ii. Fire clay products should be excluded from the PUC since it is used solely for the purpose cooking. The Authority cannot ignore the fact that fire clay cookware products are not manufactured in India. It is also incorrectly stated that the interested parties have not provided any information how these products do not constitute tableware or kitchenware of ceramics while requesting for exclusion.
- iii. Porcelain products should be excluded from the product scope since the petitioners do not have standing to file a petition for porcelain products as none of them manufacture porcelain products. Only M/s Umberto Ceramics International Pvt. Ltd. stated that they manufacture porcelain items in India, however, they are neither a part of the applicant nor a supporter to the petition.
- iv. The Authority, while doing its examination has completely overlooked the facts presented by the interested parties that the product under consideration in the investigation includes three types of products vis-a-vis Bone China wares, Porcelain wares, & Stoneware. Accordingly, there is a huge difference between the three types not only in terms of their composition but also on account of their costing, marketability, pricing, weight etc. The product under consideration also varies in terms of decoration and non-decoration. Therefore, any single dumping or injury margin on all the products concerned would not only be arbitrary but would lead to absurdity.
- v. The current investigation is without jurisdiction, suffer from material procedural irregularities which are incurable i.e. absence of proper authorization, unreliable data on production for determining the standing of the petitioner companies, misleading segregation of import data by the domestic industry. A major chunk of higher price entries relating to the subject country, which should have been part of the 'PUC' had been

marked as 'NPUC' by the applicant. At the same time, there were entries which were marked as 'PUC' but were not actually a part of the definition of the product under consideration.

- vi. The assessment of standing of the domestic industry is incorrect. The Authority has accepted a very low share of 31% as sufficient to constitute major proportion in the facts and circumstances of the case. Existence of unorganized sector of Indian producers in itself does not allow the Authority to allow very low share of 31% to constitute as major proportion. The Authority can have flexibility to permit a low share of total production to constitute as major proportion when it faces practical difficulties due to existence of fragment market. In the present case, there are no practical difficulties that prevents participation of other Indian producers who have provided support letters and whose combined share is 31% in the total production. Moreover, mere supporting the petition by way of simple letter does not constitute support unless the complete details with regard to cost and other injury parameters is provided.
- vii. The documentary evidence submitted by the respondents, has been ignored in the disclosure statement. It may be recalled that in response to an RTI query, it has specifically been confirmed by the CSIR head office that they do not collect or maintain any record of total production of Ceramic tableware in India. It is, therefore, abundantly clear that when the principal body itself has formally confirmed that no such information is collected or maintained by them, the question of the same being provided by the regional office simply does not arise
- viii. The import statistics are improperly and incorrectly determined. Firstly, the authority did not provide any basis for import transaction for the preceding three years. Secondly it is incorrect to determine quality in weight terms of import transactions that are reported in sets/pieces/numbers etc based on the value of the import transactions reported in weight. Thirdly, the methodology used to determine import volume is not disclosed in part and is incorrect in part.
- ix. The interested parties have a vested right to get access to all the information filed by the applicants and the interested parties, irrespective of its form, as long as the same is a part of the official record on the basis of which the Authority proposes to rely upon, subject to the provisions of confidentiality. Denial of the soft copy of the data already on record (in soft format) would be a clear violation of the rules and the principles of natural justice. Despite repeated requests by the responding parties, neither the Authority nor the domestic industry provided the responding parties with the original import data used for the purpose of initiation of the investigation. It is reiterated that the import data filed by the applicants along with the application forms a part of the case record and there is no reason for denying access to the same to other interested parties.
- x. Assessment of injury to the Domestic Industry is incorrect. It is submitted that there cannot be an objective assessment of material injury to the Domestic Industry when the Domestic Industry has low share in total production. Large enough proportion of total domestic production is required to be assessed for determination of material injury when low share of Indian production is considered as sufficient for assessment of major

proportion. In *EC-Fasteners*, it was noted that even in case of fragmented industries where low share of Domestic Industry is considered as constituting major proportion, there is a requirement to provide data of sufficiently large enough proportion of domestic production for the purpose of injury determination. Thus, the Authority is requested for complete information from other domestic producers for proper injury determination.

- xi. The petitioner's net sales realization during the POI was higher than NIP, in such scenario how the claims of petitioners regarding price suppression, depression and underselling is justified. This clearly means that imports had no impact on the petitioner during the POI. Thus the Authority is requested in terms of *Ammonium Nitrate originating from Russia* and *Iran, X-ray baggage imports from the EU and Nirma Ltd v. UOI*, to review its assessment of injury and terminate the investigation.
- xii. There is no causal link between the imports from the subject country and injury to the Domestic Industry. The Authority has wrongly noted market share which is 29.33% in POI and not about 50% as noted by the Authority. Sales & production of DI increased commensurately with increase in demand. Profitability, return on capital employed cannot be said to have affected drastically since it increased in POI as compared to the base year. Moreover, the DI is not suffering any losses, despite some decline in the POI it is still making profits. The observation that the DI could not increase selling price to remunerative level despite increase in cost of production is not supported by the data on record. The selling price and cost of sales increased commensurately.
- xiii. There is no co-incidence between the losses to the DI and the imports from China PR. The DI reported its highest profit increase in 2014-15 while the imports originating in China increases the most.
- xiv. The Authority has wrongly noted that injury margin is substantial against all responding exporters and producers, since no producers or exporters have co-operated in the investigation.
- xv. The Authority to kindly consider that this is a fit case where the anti-dumping duties should be recommended in percent terms only. The duty on the basis of USD/KG would lead to inverse effect of duty, as the higher end products would attract very little duty and the lower end products would attract unreasonably higher duty which would not only be unfair but would also cast unreasonable burden on the general public using lower end products.
- xvi. The NIP has been improperly determined. The Authority is required to determine NIP based on Annexure III of anti-dumping rules, however as per the disclosure there is no mention of such determination by the Authority. Thus the Authority is requested to clarify and issue revised determination of NIP based on applicable rule.
- xvii. The Authority is requested for an opportunity to explain the issues which have unfortunately not been addressed or overlooked in the disclosure statement. It may be pertinent to mention that in the past many cases, the Authority has indeed given post-disclosure statement hearings.

Examination by the Authority

101. It is noted that the issues raised at post disclosure stage have already been examined by the Authority in above relevant paragraphs, however for the sake of the clarity of the submissions they are addressed as below:

- i. As regards the scope of PUC, it has been observed that the Authority had addressed the concerns of all the interested parties and after detailed examination clearly determined the scope of the PUC in the above paras of the findings.
- ii. The various exclusions sought by the interested parties have been examined item by item and addressed in detail in relevant paras of this finding. The specific exclusion again requested by the importer pertaining to Cookwares was re-examined, and the Authority reiterates that Ceramic Cookwares can also be used as Servewares and would logically fall under the category of tableware/kitchenware and hence covered within the scope of the PUC under the present investigation.
- iii. As regards the standing of the Domestic Industry, the Authority has relied upon the best available information. Further, it is noted that the petitioners cannot be denied relief under the law in view of absence of precise information with regard to production of individual companies in the unorganized sector. The precedent for such determination is available in some of the earlier determination by the Directorate e.g. AA batteries, lead acid batteries, silk fabric and silk yarn etc., where the production was determined based on the assessment as per the available credible relevant source of information in those investigations. Therefore, the Authority has considered appropriate to accept the petitioners as the eligible domestic industry in terms of Rule 2 (b) of the Rules.
- iv. As regards the procurement of CGCRI letter, it is reiterated that the concerned letter is kept in the public file for inspection by all the interested parties.
- v. As regards the import data, it has been observed that the Authority had clearly stated that it has relied upon import data procured from DGCI&S in the present investigation; the same has also been mentioned in the above concerned para of the finding.
- vi. As regards the determination of NIP, it has been observed that NIP has been determined as per the provisions of Annexure III of Custom Notification No. 15/2011-customs (N.T) dated 1st March, 2011, which laid down the principles for determination of Non-injurious Price and the rules and the uniform practice followed in the Directorate for the calculations.
- vii. As regards the post-disclosure statement hearing, it has been observed that, as per Rule 6(6), the Authority has provided the opportunity of hearing to all the interested parties to present their views orally in front of the Designated Authority. Here it is pertinent to mention that in the present case, all the interested parties have been provided two opportunities of hearings on account of the changed Designated Authority, hence the argument of providing another hearing post the issuance of Disclosure is redundant, also it must be noted that the Rule 6(6) gives discretion to the Authority to provide hearing to all the interested parties, it is not a mandatory provision, hence all the interested parties had enough opportunity to present their views orally as well as in written, which

have been duly addressed by the Authority in the present finding. Request for another hearing is redundant and without any substantial grounds.

O. CONCLUSIONS

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

- i. The product under consideration has been exported to India from the subject country below its normal value, resulting in dumping.
- ii. The Domestic Industry has suffered material injury due to dumping of the product under consideration from the subject country.
- iii. The material injury has been caused by the dumped imports from the subject country.

P. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES:

103. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. It is recognized that the imposition of anti-dumping duties might affect the price levels of the downstream products and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the Domestic Industry. On the contrary, imposition of antidumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the Domestic Industry and help maintain availability of wider choice to the consumers of the subject goods. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.

Q. RECOMMENDATION

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

- i. The product under consideration has been exported to India from subject country at dumped prices.
- ii. The Domestic Industry has suffered material injury.
- iii. Material injury has been caused by the dumped imports of subject goods from subject country.

105. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the

Domestic Industry caused by such dumped imports, the Authority is of the view that imposition of antidumping duty is required to offset dumping and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder.

106. Having regard to the lesser duty rule, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the Domestic Industry. Accordingly, the Authority recommends confirmation of provisional anti-dumping duty on the imports of the subject goods, originating in or exported from China PR as was recommended in the preliminary finding notification dated 4.5.2017 and notified vide Customs Notification No..27/2017-Customs (ADD) dated 12.6.2017, as mentioned in Column 9 of the duty table as below.

DUTY TABLE

S.N	Tariff Item*	Description of Goods**	Specific ation	Country of Origin	Country of Export	Produc er	Export er	Amount (in USD)	UOM
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	6911 and 6912	Ceramic Tablewares and Kitchenwares	Any	China PR	China PR	Any	Any	1.04	KG
2	6911 and 6912	Ceramic Tablewares and Kitchenwares	Any	China PR	Any	Any	Any	1.04	KG
3	6911 and 6912	Ceramic Tablewares and Kitchenwares	Any	Any	China PR	Any	Any	1.04	KG

* Custom classification is only indicative;

** Description of the Product under consideration is “Ceramic table wares and kitchen wares, excluding knives and toilet items”. Bone china, stoneware and porcelain-ware all constitute ceramic products as detailed in para 20 above.

107. The landed value of imports for this purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

108. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Shri Sunil Kumar)

Additional Secretary & Designated Authority