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F. No. 7/11/2017-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

Dated the 19th June, 2019

FINAL FINDING
(C. No. 04/2017)

Subject: New Shipper Review under Rule 22 of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 pertaining to Anti-Dumping Duty imposed on the imports of Melamine originating in or exported from China PR as requested by M/s Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) and M/s Foshan Kaisino Building Material Co., Ltd (exporter) initiated on 1st January, 2018.

No. 7/11/2017- DGAD: Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

2. The Designated Authority (hereinafter referred to as "Authority") through the 2nd SSR regarding imports of "Melamine" (hereinafter referred to as "subject goods") into India originating in or exported from China PR (subject country) recommended AD duty on subject goods vide notification No. 15/17/2014-DGAD dated 5.12.2015 implemented by Customs Notification No. 02/2016-Cus (ADD) dated 28-01-2016. The original AD duties were levied on the subject goods from the subject country vide Final Findings Notification No. 14/16/2003-DGAD dated 3.9. 2004 and Customs Notification No. 107/2004 dated 16.11.2004. Thereafter the first SSR was concluded vide Final Findings Notification No. 15/29/2008-DGAD dated 20.11.2009 and implemented through Customs Notification No. 10/2010-Customs dated 19.02.2010.

3. The Authority in the second sunset review recommended a fixed AD duty instead of the reference price which was imposed during the 1st SSR on noting during the investigation that the reference price was being circumvented through over invoicing by importers.

None of the producers/exporters had cooperated during the 2nd SSR and, same quantum of AD duty was recommended for all producers/exporters.

4. M/s. Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) and M/s Foshan Kaisino Building Material Co., Ltd (exporter) (hereinafter referred to as "New Shippers" or "Applicants") filed a duly substantiated application before the Authority in accordance with Rule 22 of the AD Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) in respect of the definitive anti-dumping duty imposed by the Central Government vide Customs Notification No. 02/2016- Customs (ADD) dated 28.1.2016, concerning imports of the subject goods, originating in or exported from China.

5. The Act and the AD Rules made thereunder require the Authority to undertake a New Shipper Review for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question who has not exported the subject goods to India during the period of investigation of the original anti-dumping investigation from the subject country and further that the applicant is not related to any of the exporters and producers in the exporting country who are subjected to the antidumping duty. The applicant claimed that they are not related to any of the exporters/producers in China against whom anti-dumping measures are in force with regard to the subject goods. Furthermore, they claimed that they have not exported the product concerned during the period of investigation of the original investigation.

6. The Authority after prima facie examining the request submitted by the applicant initiated a new shipper review investigation in accordance with the provisions of Rule 22 of the AD Rules vide Notification F. No. 7/11/2017-DGAD dated 1.1.2018.

7. Ministry of Finance notified the provisional assessment on all exports of the subject goods made by applicants till completion of the subject NSR investigation vide Notification No. 11/2018- Customs (ADD) dated 20.3.2018.

8. The period of investigation for the purpose of this New Shipper Review has been considered as 1st January, 2018 to 31st December, 2018.

A. PROCEDURE

9. The procedure described below has been followed with regard to the present investigation:

(i) The Authority issued a public notice vide Notification No. 7/11/2017 on 1st January, 2018 , published in the Gazette of India, Extraordinary, initiating the subject NSR anti-dumping investigation.

(ii) The Authority forwarded a copy of the initiation notification to the applicant along with a copy of the exporter's questionnaire and gave them opportunity to make their views known in writing, and filing relevant data in the prescribed Questionnaire, after expiry of the POI.

(iii) The Authority also forwarded a copy of the initiation notification to the Embassy of China PR in New Delhi, India.

(iv) The Authority forwarded a copy of the initiation notification to the known domestic producers in India and gave them opportunity to make their views known in writing.

(v) In response to the initiation notification, Questionnaire response was filed, the applicant . M/s. Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) and M/s M/s. Foshan Kaisino Building Material Co., Ltd (exporter). The producer/exporter however has not filed the questionnaire claiming market economy status.

(vi) Arguments raised and submitted by various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this disclosure statement.

(vii) Non-confidential version of the evidence presented by various interested parties was made available in the form of a public file kept open for inspection by the interested parties.

(viii) The Authority held Oral Hearings on 14.2.2019 to provide an opportunity to the interested parties to present information orally in accordance with Rule 6(6). The interested parties were allowed to present rebuttal rejoinders on the views/information presented by other interested parties. The Authority has considered submissions received from interested parties appropriately.

(ix) Further information was sought from the applicant and other interested parties to the extent deemed necessary. The data submitted by the Applicant was examined and verified through desk study and relevant back-up documents were called for, wherever required.

(x) The Authority issued a disclosure statement dated 22/5/2019 as per rule 16 and invited comments from the interested parties by 3/6/2019. However on request of time extension the Authority extended the same till 7/6/2019.

(xi) *** in the statement represents information furnished by interested parties on confidential basis and so considered by Authority under the AD Rules.

(xii) Exchange Rate of Rs. 69.26 per USD has been adopted for POI.

The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated confidential.

(i) All relevant Submissions/comments made by interested parties, during the course of this investigation have been considered and included in this disclosure statement.

B. PRODUCT UNDER CONSIDERATION

10. The product under consideration in the original as well as sunset review investigation is "Melamine, a tasteless, odourless, non-toxic pure chemical powder, originating in or exported from China. Melamine is reacted with formaldehyde and made into resins or moulding powder for making innumerable products of beauty and utility".

11. Melamine is classified under ITC HS 29336100 under the Chapter 29 of the Customs Tariff Act.

C. SUBMISSIONS BY VARIOUS INTERESTED PARTIES AND DOMESTIC INDUSTRY :

12. **Submissions by the Domestic Industry:**

i. Petitioner has made contradictory and vague statements in the Petition. It is unclear whether the Petitioner has exported the subject goods to India.

ii. A new format for NSR applications has been prescribed by the Authority vide Trade Notice 08/2018 on 25th April, 2018. The application has been filed as per the old format and no efforts have been made by the Applicant to update the application into the new format. As a consequence, the application lacks important information that is necessary to justify the need for initiation and decide the merits of the case.

iii. The law recognizes the need for a New shipper review, and an investigation is carried out if the applicant satisfies all the three criterion for initiation of a NSR investigation, i.e. (a) they are genuine/bona-fide exporters who have made bona-fide sales; (b) they have not exporter goods in the original investigation; and (c) they are not related to producer or exported of subject goods who is attracting anti-dumping duty. However, the Applicant in the current investigation does not fulfill the criteria.

iv. The petition does not provide any information and necessary evidences on fulfillment of conditions of eligibility under Rule 22 by Foshan Kaisino Building Material Co., Ltd. (exporter). Therefore, no comments can be made on the eligibility of Foshan Kaisino Building Material Co., Ltd for initiation of a NSR investigation.

v. Investigation was initiated on 1st January, 2018 and no evidences have been placed on record yet to show the fulfillment of eligibility criteria by the Applicant. The Domestic Industry will not be able to offer comments if any evidence is producer at this late stage of the investigation.

vi. Prospective POI, as in the current investigation, is inappropriate and contrary to law, as stated by the CESTAT in H&R Johnson (India) Limited v. Ministry of Finance.

vii. Due to the prospective POI, the applicant has been able to manipulate and doctor the prices by (a) by doing an insignificant number of transactions (b) ceremonial volume of exports, (c) at high prices.

viii. The sales examined for arriving at an individual dumping margin should be genuine in nature. The sales should be bona-fide commercial transactions. They should not be used as a mere tool to achieve a lower dumping margin through manipulation by a few doctored high priced transactions.

ix. Other jurisdictions like Brazil, China, USA, Turkey, Taiwan, EU and Vietnam mandate, by law, existence of substantial/ sufficient quantity of bona-fide exports from the Applicant.

- Brazil provisions on NSR include that in event of substantial quantities of Brazilian imports of the applicant's product within a period of six months, information on the manufacturing costs and normal value of the like product in the exporting country shall be included in the application, in addition to information on the export volume and price to Brazil as well as any adjustments required for the purpose ensuring a fair comparison. The application shall be

filed up to 4 months from the termination of the period provided above." Brazil has imposed following conditions regarding the import of melamine:

- There must be Brazilian Imports of the applicant's product within a period of six months.
- Such import must be in substantial quantities.
- The application must be made within a period of 4 months from the termination of the above period.

- China PR also provides that the applicant for new shipper must be a party who has actually exported the product under the investigation to the People's Republic of China after the original Period of Investigation. Article 5 the applicant for new shipper review must be the party who has actually exported the product under investigation to the People's Republic of China after the original period of investigation.The export mentioned in *Article shall be made in sufficient quantities so as to constitute the basis for determination of the ordinary export price. Such quantities shall be established on the basis of transaction volume under the normal commercial conditions of the product under investigation.*" The conditions to be fulfilled by the applicant are mentioned below:
  - The applicant must have actually exported the product under investigation to China after the original period of investigation.
  - The exports must be made in sufficient quantities to allow determination of ordinary export price.
  - Whether the exports have been made in sufficient quantities shall be established on the basis of transaction volume under the normal commercial conditions.The Chinese law further provides that the "*investigation period for new shipper review shall be 6 months prior to the submission of the application.*"The domestic industry has mentioned that the present case concerns China and that a Chinese producer cannot demand a treatment more favourable than what its own country grants to foreign producers.
- US Laws provides that an exporter must have actually exported the subject goods or sold the product for export, as a precondition for making a request for a new shipper review."*Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States.*"The first two questions of the checklist for filing an application for new shipper review are also on the issue:

  "*a. Has exported, or has sold for export, subject merchandise to the United States? (Section 351.214(b)(1))"*

  "b. Has made an entry for consumption in the United States, or sold the subject merchandise to an unaffiliated customer during the relevant period of review (there must be either a sale or entry during the new shipper POR to proceed with initiation)? (Section 351.214(f)(2)(i))?"

  US carries out a bonafide sales test, as is evident from the extracts of Issues and Decision Memorandum for Final Rescission of "Issues and Decision

Memorandum for the Final Rescission of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Shanghai Sunbeauty Trading Co. Ltd." [A-570-863]: The US Court of International Trade has upheld the use of the bona fide sales test. The rationale behind the test stems simply from the fact that an exporter should not be allowed to get the benefit of a lower margin on the basis of a few atypical transactions. A new shipper review should not be allowed to be used as a tool for the exporters to gain an undue advantage by stage managing their business.

- Article 11(4) of the Regulation (EU) 2016/1036 of The European Parliament and of The Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union provides as under with reference to New Exporter Reviews:"*The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the Union following the investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.*" The European Union also requires that a review be initiated only where the exporter has either exported the subject goods or has entered into an irrevocable contractual obligation to export a significant quantity to the European Union.
- Turkey has similar provisions to that of the European Union and with regard to eligible applicants of a New Exporter Review as under;

  "*Article 8- The decision for definitive measures may be reviewed upon request by the new producer or exporters which have not exported the product concerned during the period of investigation and which can show that they are not related to any of the exporters or producers whose products are currently subject to the definitive measures. However, producers or exporters requesting such a review should have either actually exported the product concerned to Turkey following the investigation period or entered into an irrevocable contractual obligation to export a significant quantity of it. A new exporter review shall be carried out on an accelerated basis to determine the margin of dumping or amount of subsidy for those who made the request.*"

- The Regulations Governing the Implementation of the Imposition of Countervailing and Anti-Dumping Duties of Taiwan also provide that an exporter may apply for a new shipper review only if such an exporter has exported significant quantity of the product concerned. Further, the application may be made only after one year following the commencement of exports.

  "*Article 35-1Foreign producers or exporters of the case may apply for the new shipper review to MOF with relevant documents or proof of evidence, and request for an individual dumping margin, respectively, provided that:*

  - *no exportation of product concerned to Taiwan during the period of investigation.*

- *they can show that they are not related to any of the exporters or producers of the case, and they have not exported the product concerned to Taiwan during the period of investigation.*
- *they have exported a significant quantity of the product concerned to Taiwan following the original period of investigation.*

- Under Vietnam Law requires that an applicant filing for a new shipper review satisfy the following three conditions:
  - The applicant has no relationship to producers/exporters subject to duty
  - The applicant has actually exported to Vietnam after the period of investigation of the original investigation,
  - The volume of exports to Vietnam is large enough for the investigating authority to determine a reasonable export price. The volume of exports would be seen at the time of filing of the application.

    The global practice on the issue of new shipper review is very clear in that the following requirements must be satisfied by an applicant making a request for a new shipper review:
  - The applicant must not have exported the subject goods to the investigating country during the period of investigation of the original investigation;
  - The applicant must not be related to any producer or exporter who has been subject to anti-dumping on the product under consideration;
  - The applicant must have exported the subject goods to the investigating country after the period of investigation of the original investigation;
  - The exports must have been made in sufficient or significant quantities so that the export price is representative; and
  - Such exports must be made before the application has been filed.

x. The domestic industry has mentioned the following regarding the Indian practice and jurisprudence in NSR applications with regard to "commercial/significant quantity of exports",

- The Indian law does not require that the exporter must have made exports before an application for new shipper review may be made; however, the recent practice of the Designated Authority and the decisions of the Court lead to the same conclusion. It may be noted that initially the Designated Authority had considered prospective period of investigation. However, such a practice was also frowned upon by the Tribunal in the case of H and R Johnson (India) Limited Vs. Designated Authority, reported in 2007 (212) E.L.T. 130 (Tri. - Del.) in judgment dated 15th February, 2007.

xi. Again, in decision dated 27th August, 2007, in the case of H and R Johnson (India) Limited Vs. Ministry of Finance in Appeal Number 1/2007 – Anti-Dumping, the Tribunal clearly held that the use of prospective period of investigation was not tenable in case of a new shipper review. Further the Tribunal laid down that the following conditions must be satisfied for an exporter to make an application for a new shipper review:

- The applicant for new shipper review must be the party who has actually exported the product under investigation to India after the original period of investigation.

- Such exports should have been made in sufficient quantities so as to constitute the basis for determination of the export price.
- Such quantities shall be established on the basis of transaction value under commercial conditions of the product under investigation.
- For a meaningful investigation, the investigation period for determining the dumping margin for the new shipper, should ordinarily range between six months to twelve months prior to the submission of the application.

The above principles have also found a place in the recent findings, the Designated Authority has taken cognizance of the fact the exports by the new shipper must be in significant volumes so as to allow determination of a representative price. In this respect, the findings of the Designated Authority in the matter of New Shipper Review investigation concerning imports of Jute products from Bangladesh in respect of M/s. Janata Jute Mills (Producer) dated 22nd November, 2018.

xii. Similarly in "New Shipper Review investigation concerning imports of 1 1 1 2 Tetrafluoroethane or R 134a originating in or exported from China PR in respect of M/s. Zhejiang Sanmei Chemical Ind. Co., Ltd. (Producer/Exporter), M/s Zhejiang Sanmei Chemical Products Co., Ltd (Exporter) and M/s Jiangsu Sanmei Chemical Ind. Co., Ltd (Producer)" [No.15/22/2016-DGAD] dated 26th July, 2018 the Designated Authority's records decision be noted. The above case involved a prospective period of investigation, the above case clearly brings out that it may allow an exporter to take advantage of a lower anti-dumping duty.

xiii. In the "New Shipper Review in respect of the Anti-Dumping Duty imposed on the imports of PVC Flex Film, originating in or exported from China PR, as requested by M/s Haining Tianfu Warp Knitting Co Ltd, China PR (Producer) and M/s Manna, Korea RP (Exporter)" [No. 15/23/2011- DGAD], the Designated Authority found that in case of a small volume of exports, there was a risk that the transactions had been stage managed to obtain a lower margin. Therefore, the Designated Authority refused to allow a separate margin to the exporter, and they were relegated to the residual duty.From the above analysis and discussions, it is evident that conditions listed under Rule 22 do not suffice for an application for new shipper review. In order to ensure than an exporter does not take undue advantage of the process, the conditions as listed by the Tribunal must also be necessarily satisfied.

xiv. Trade Notice 01/2019 dated 29th January 2019 has also clarified the practice regarding existence of commercial quantity of exports to receive an individual dumping margin during a NSR investigation which inter alia states that the NSR application shall be entertained by the Authority only if the NSR applicant has undertaken actual exports to India in "commercial quantities" for the product concerned before making the application.

xv. The Authority has specifically prescribed that the quantities exported by the exporter should be in commercial quantity so as to receive an individual margin of dumping. Even though the trade notice is prospective in nature, the principle highlighted is not a new

principle. The principle of actual exports been made in commercial quantity has been recognized by the Authority as well as Hon'ble CESTAT in past

xvi. The need for commercial/significant quantity of exports, along with other requirements above Rule 22, have been signified in multiple decisions by the courts and Final Findings by the Authority.

xvii Appropriateness of the import price cannot be ascertained since there are no questionnaire responses from importers. In this regard, the peculiar facts and circumstances of the case make the export price unreliable.

xviii. Excessive confidentiality has been claimed in the questionnaire responses. The non-confidential version of the questionnaire does not correspond to the Trade Notice on confidentiality, the law and practice of the Authority.

xix. Due to excessive confidentiality and insufficient information, it cannot be ascertained whether Market economy status has been claimed by the Applicant. Moreover, any such claims for Market economy treatment should be rejected on the grounds that the normal value calculation during the sunset review was carried out on non-market economy basis.

xx. If the Applicant considers that the determination should be on the basis of domestic selling price, the same shall be contrary to the practice of the Authority.

xxi .No explanation for inclusion of exporter in the channel of trade has been made by the applicant. The same can be used for manipulation by the Applicant and such unverified claims should be rejected.

xxii. Prospective POI is not justified in the present investigations since no proper reasoning has been provided by the Applicant for absence of exports during the original POI.

xxiii. There were no responding exporters in the sunset review and hence all the Chinese exporters have continued to export at the residual duty rates. When there is equal competition between all Chinese exporters, lack of individual dumping margin cannot be a proper reason for absence of exports.

xxiv A comparison of exports as per China custom data and imports as per DGCI&S data and exporters' data shows that the responding exporter has sold the PUC at an artificially higher price as compared to other Chinese exporters.

xv .Absolutely no arguments have been made on (a) any issues pertaining to the present investigation, (b) how conditions under Rule 22 are fulfilled, (c) any submissions on pertinent submissions made by the domestic industry.

xvi. No arguments made by the Domestic Industry during the oral hearings have been responded to. (a) No evidence provided "to show" that the conditions laid down in Rule 22 have been met; (b) Requisite information to demonstrate that the exporters normal value can be considered have not been provided; (c) Bonafide sales must be shown by the exporter.

xvii. Applicant has consciously not filed any submissions in the written submissions and provides all its major claims either in the confidential version of the submissions or in the rejoinder submissions, knowing that the Designated Authority does not follow a practice of making rejoinder accessible to other interested parties. Any submissions made orally are taken into account only if it is submitted in the written submissions.

xviii. Domestic industry has determined dumping margin considering price from market economy third country to India. It would be seen that the dumping margin is in fact higher than the dumping margins determined in the POl of the original investigations.

13. **Submissions by the Applicant Exporter/Producer:**

i. The Applicant did not export the PUC to India during the period of investigation of the sunset review investigation having POI as April 2014 to June 2015.

ii. The Domestic Industry has contended that it is unclear from the petition whether the applicant has exported the product to India or not. In this regard, we submit that we have already submitted the complete information with our application to the Authority. It is clear from the application itself that the applicant has exported substantial quantity of the subject goods to India. Further, the said statement of the Domestic Industry is contradictory to their own submission of their written submissions wherein they themselves have provided the export prices of the applicant as per China customs and DGCI&S data.

iii. The Domestic Industry has made submission regarding the object, scope and purpose of the New Shipper Review. They have concluded that "while a bonafide new shipper has the right to seek individual margins, but at the same time the Designated Authority needs to ascertain that the claims are bonafide and there is no abuse/misuse/ circumvention of anti-dumping duties. It is for this reason that the applicant needs to be strictly put to establish that (a) they are genuine/bonafide exporters who have made bonafide sales (b) they have not exported goods in the original investigation and (c) they are not related to producer or exporter of subject goods who is attracting anti-dumping."

iv. The Applicant also certified that it is not related to any entity in any country on which anti-dumping duty on the subject goods is applicable. Thus, the Applicant satisfied both the requirements of Rule 22 of the AD Rules and was eligible for the initiation of the New Shipper Review and the determination of an individual rate of duty.

v. The Applicant did not claim excessive confidentiality. All the documents upon which confidentiality was claimed contain business confidential information and are not available in the public domain and did not impact or prejudice the Domestic Producers.

vi. That the concerned trade notice (Trade Notice No. 08/2018) was issued on 25.04.2018, while the present application was filed by the applicant prior to that date. In this regard, the trade notice specifically mentions that it is applicable on the applications filed 'after' the issuance of said trade notice. Therefore, there is no merit in the issue raised by the Domestic Industry.

vii. In this context, it is submitted that the respondent meets all the requirements mentioned by the Domestic Industry. The initiation of the present investigation itself was done after the respondent sufficiently established that (a) they are genuine/bonafide exporters who have made bonafide sales (b) they have not exported goods in the original investigation and (c) they are not related to producer or exporter of subject goods who is attracting anti-dumping. The Authority has fully scrutinized the application and issued letter seeking additional information to satisfy themselves in accordance to the requirement of Rule 22. Therefore, the contentions of the Domestic Industry in this context, needs to be rejected. The respondent humbly requests the Authority to kindly determine the individual dumping margin for the respondents, as they have provided all the requested information for the purpose of determining an individual dumping margin for the respondents. The respondent also invites the Authority to kindly carry out the on the spot verification of the data filed by them to satisfy itself about the bonafide intentions of the respondent and the data filed by it.

viii. That the excerpt from case cited by the domestic industry refers to an observation of the Hon'ble CESTAT which was struck down by the Hon'ble High Court of Delhi in H and R Johnson (India) Limited v. Union of India & Ors. [2008 (232) E.L.T. 390]. The High Court expressed its disapproval from observation of the CESTAT in the paragraph cited by the domestic industry and noted that in the case of a first-time shipper, a retrospective period cannot be taken. Based on this, the High Court agreed that, with respect to New Shipper Review, a prospective period of investigation must be allowed and cannot be ruled out. In view thereof, the contention of the Domestic Industry in this regard holds no merit in terms of their reasonability or legality, and therefore, should be rejected.

ix. The pre-condition that exports should be in commercial quantum is contrary to the requirement under Rule 22 of the Anti-dumping Rules and Article 9.5 of the Anti-dumping Agreement. Rule 22 of the Anti-dumping Rules states that the Authority shall carry out new shipper review to determine individual margin of dumping if (i) the producer or exporter has not exported the product to India during the period of investigation and (ii) this producer or exporter is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

x. That the requirement of "commercial quantities" as proposed by the Domestic Industry shall encourage the concerned exporters to artificially lower down their prices to absorb the anti-dumping duties. In fact, it would be untenable for the respondent to export the subject goods at unfavourable prices in order to maximize quantity of exports even when they are competing against the prices offered by the Domestic Industry and other Chinese producers on whose goods there is no or lesser anti-dumping duties applicable. The respondent did not deviate from its standard practice and exported to India during the POI only when it was able to obtain suitable price in accordance with market demand. Further, to compare total exports from China to exports made by one producer would be unreasonable and contrary to law.

xi. There is no requirement under Rule 22 that exports by the new shipper should be of certain minimum quantity to allow determination of individual dumping margin. Such a requirement shall add an additional obligation of "exports in commercial quantities" on the concerned exporter which is otherwise not mentioned under Rule 22. In other words, by requiring "representativeness" of exports, the Authority has imposed a condition which is not provided in Rule 22.

xii. In the recently concluded New Shipper Review investigation concerning imports of Jute Products (F. No. 7/10/2017-DGAD, dated, 22.11.20118), the Authority granted the individual dumping margin to the applicant exporter M/s Janata Jute mills Ltd despite the fact that the concerned exporter exported merely 23MT of the subject goods in the total demand of 50,000 MT.

xiii. The requirement of "commercial quantities" as proposed by the Domestic Industry shall encourage the concerned exporters to artificially lower down their prices to absorb the anti-dumping duties. In fact, it would be untenable for the respondent to export the subject goods at unfavourable prices in order to maximize quantity of exports even when they are competing against the prices offered by the Domestic Industry and other Chinese producers on whose goods there is no or lesser anti-dumping duties applicable.

xiv. The Domestic industry claims that the lack of response from importers is evidence that the Respondent has somehow attempted to suppress the fact that a token export was made at unrealistic price in order to obtain a low or no dumping margin and thereafter aggressively dump the volumes. In this regard, it is submitted that the domestic industry has presented its theories and assumptions and has made no legal or factual submissions in this regard. It is submitted that the neither the respondent nor the Authority itself can compel an independent importer to participate in an ongoing investigation. Therefore, the lack of such participation does not evidence anything. The domestic industry's submissions are merely accusatory statements and conjectures with no legal or factual merit. Therefore, we request the Authority to reject such submissions.

xv. The Domestic Industry has stated that the applicant does not clear that on what basis they have claimed the normal value. In this regard, the respondent submits that it is a considered practice of the Authority to not accept the normal value of the Chinese producers. This fact is also well reflected in the written submissions of the Domestic Industry. Therefore, the respondent submits that the Authority may determine the normal value for the respondent on the basis of the cost of production of the subject goods produced in India.

xvi. The Domestic Industry has claimed that a prospective POI is not justified in the present case and they cannot appreciate why the applicant did not export the subject goods to India. In this regard, the applicant submits that the claim of the Domestic Industry in the paragraphs under reply is misleading and fallacious. The respondent has made an export of 876.5 MT of the subject goods to India. Further, the said statements are also contradictory to their own submissions wherein they themselves have provided the export prices of the applicant as per China customs and DGCI&S data. The respondent is not able to appreciate that when as per the Domestic Industry there are no exports by

the respondent, how there can be export prices of the applicant for their exports to India as per China customs and DGCI&S data. Clearly, the Domestic Industry is trying to confuse the Authority and therefore, their submission should be rejected in totem.

xvii. The Domestic Industry has submitted that the export prices of the applicant for their exports to India as per China customs and DGCI&S data. While the respondent has been constrained from providing any comments on the same due to the confidentiality claimed by the Domestic Industry, the respondent submits that the said data appears to be totally fallacious and manufactured. It is a matter of record that the DGCI&S data does not make segregation on the basis of the exports made by any particular exporter. However, the Domestic Industry has claimed to provide the export price of the respondent as per DGCI&S data in the para under reply. Clearly, the data submitted by the Domestic Industry is not actually DGCI&S data and the Domestic Industry is trying to mislead the Authority by presenting some manufactured data as DGCI&S data. In view thereof, the said submission of the Domestic Industry along with the data presented by it should be outrightly rejected.

xviii. That in the present case, the initiation of the present investigation was done after the respondent sufficiently established that (a) they are genuine/bonafide exporters who have made bonafide sales (b) they have not exported goods in the original investigation and (c) they are not related to producer or exporter of subject goods who is attracting anti-dumping. It is further submitted that after filing of information, the Authority has fully scrutinized the application and issued letter seeking additional information to satisfy themselves in accordance to the requirement of Rule 22. Therefore, the contention of the Domestic Industry that Authority has not done due diligence is incorrect, while initiating the investigation.

xix. That the lack of participation of unrelated importer cannot be held against the exporter. Moreover, non-participation of independent importer to participate in an ongoing investigation cannot be held against the participating exporters. The domestic industry's submissions in this context, are merely accusatory statements and conjectures with no legal or factual merit. Therefore, applicant request the Authority to reject such submissions of the Domestic Industry.

xx. That the decision to export the goods and the channel of such exports is purely a business decision solely resting with the producer / exporter and is based upon various factors including payment policies of the importers. Moreover, this is very common practice in many countries to export through traders.

14. **<u>Submissions by Importers</u>**

Comments filled by M/s Sandeep Organics Pvt. Ltd.

i. The new shipper review may be misused.
ii. What is the need of a different exporter when the producer can export directly?
iii. The exporter & producer should have same Anti-Dumping as other exporters & producers of China.
iv. The Exporter is exporting other products also.

v. The producer has the capacity to dump the material.
vi. This NSR would drop local prices and can affect the profits of the domestic industry, which is suffering losses.
vii. The central Government shall ask for provisional Anti-Dumping & the importer should apply for refund after the final findings of the review.
viii. The Anti-Dumping amount is very big and therefore heavy Anti-dumping should be levied.

Comments filled by M/s Sunita Commercials Pvt. Ltd.

i. We have been in this business for past more than two decades The price difference in melamine supplied by different Chinese suppliers is hardly in the region of 5-10 US$/MT. There are more than 40 plants in China producing Melamine China currently exports Melamine in the region 3-4 lac MT per annum to various countries.

ii. The enclosed statement of imports of melamine into India shows that the price at which the applicant company has exported the product and the price at which other Chinese suppliers have supplied the product. It would be seen that there is a difference of more than 100-200 US$/MT in the prices at which the applicant company has exported the product to India and the price at which other Chinese suppliers have supplied the product in Indian market.

iii. Since we are operating at retail level and interacting extensively with the consumers, we are quite aware of the price at which imported product has been resold in the market. There is no material difference in the prices of the applicant company and the price charged by other Chinese suppliers in the market. This is not surprising considering that there is typically no significant difference in Chinese Melamine resold in the Indian market. This further shows that the export price reported by the applicant company is fictitious. Mere holding or documents does not in itself establish credibility of the price and therefore merely because the applicant can show a commercial invoice or payment proof, the same does not mean that the product was in fact sold at these prices. In limited sales transactions, these documents can easily be prepared in desired direction.

iv. The present application is not bonafide and there is an attempt to seek no or lower ADD so that the market currently held by other Chinese producers could be easily garnered by this entity. Even though the applicant company is a very old established company, it seems that they stared producing Melamine only recently. Given that there are significant surplus capacities in China and Chinese producers find it difficult to get the market, the applicant is obviously trying to create a market for itself by trying to create an unfair advantage in Indian market vis-à-vis other Chinese suppliers.

v. If this company is given a discriminatory and lower ADD as compared to other Chinese suppliers, this company would easily garner the market that is being catered by other Chinese suppliers. India is significantly short in Melamine and therefore there is a need for import. Import price from non-Chinese sources are much higher than Chinese sources. Such being the case, even after ADD, there

are significant import of Chinese Melamine in the country. On an average, 35000MT/annum Melamine is regularly being imported from China. The applicants intend to therefore garner this market readily by creating an unfair advantage.

vi. Since we have been regularly importing and selling Melamine in the country, we are willing to provide you any further information that we may require in establishing that the price of the company is artificial.

According Individual dumping margin to the applicant

D. EXAMINATION BY AUTHORITY

15. Rule 22 of the Anti-Dumping Rules provides as follows –

"22. Margin of dumping, for exporters not originally investigated.

(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.
(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review."

16. Article 9.5 of the WTO Agreement states as under –

"9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such

producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review."

17. In terms of the aforesaid Rule, provisions in the WTO Agreement and the past practice of DGTR, a New Shipper Review investigation is to be carried out under following circumstances for the purpose of determining individual dumping margin in respect of any exporter or producer from the subject country attracting ADD:

    i. that the exporter or producer has not exported the product under consideration during the period of investigation, and
    ii. that exporter or producer shows that they are not related to any of the exporter or producer in the exporting country who are subject to the anti-dumping duties on the product concerned.

18. In the instant case M/s.Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) and M/s. Foshan Kaisino Building Material Co., Ltd (exporter),China PR, filed an application before the Authority seeking individual dumping margin on **the imports of Melamine originating in or exported from China PR** for initiating a new shipper review. As regards the eligibility of the aforesaid producers/exporters claiming 'NSR', the Authority notes that none of the producer/exporter had participated in the second SSR investigation. The Authority in the 2nd SSR has also referenced DG-Systems data to correlate the volume and price of imports of subject goods under duty free and outside duty free category. The Authority has correlated the claim of the applicant producer/exporter of not having exported the subject goods during the original POI from the DG-Systems data considered in the earlier investigation. No interested party has provided evidence of non-fulfilment of condition by the applicant producer/exporter for NSR either on, it having made exports earlier nor on its relationship with other producer/exporter by way of any substantive evidence. The Authority therefore proposes to hold that the producer/exporter is eligible to seek a New Shipper Review in the instant case.

19. **Normal value**

    a. The Authority notes that the applicant Producer/Exporter i.e. M/s.Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) and M/s. Foshan Kaisino Building Material Co., Ltd (exporter), China PR has filed exporter Questionnaire response but have not filed the supplementary questionnaire to claim Market Economy status. In the rejoinder submissions, the applicant have claimed that it is a considered practice of the Authority not to accept the normal value of the Chinese producers and have requested that the normal value for the producer/exporter be determined by the Authority on the basis of the cost of production of the subject goods produced in India. The applicant has however not suggested any options pertaining to the first or second proviso of para 7 of the AD rules.

    b. The domestic industry in its rejoinder submissions have submitted that market economy third country export price to India be considered.

c. The Authority notes that Normal Value for a country considered as a non market economy is required to be computed in accordance with para 7 and 8 of Annexure 1 of AD rules. In the instant case the applicant has not filed any MET questionnaire and therefore the Authority notes that options under para 7 of Annexure 1 to AD rules need to be explored. Para 7 lays down hierarchy for determination of normal value and provides that normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. Thus, the Authority notes that the normal value is required to be determined having regard to the various sequential alternatives provided under Annexure 7.

d. The Authority also notes the existing jurisprudence on constructing the normal value in case of a non market economy contained in the Supreme Court judgement in M/s Shenyang Mastsushita S. Battery Co. Ltd. vs M/s Exide Industries Ltd. (Civil Appeal No. 6371/2003 dated 23/2/2005), Guwahati High court in M/s Century Plyboards (I) Ltd & Anr.-vs- Union of India & Anr. (W.P No. 6568/2017 dated 4/10/2018) and CESTAT, Principal Bench, New Delhi in M/s Apollo Tyres Ltd. vs Union of India (Appeal No. C/768, 600, 601, 773, 769/2005-AD-dated 9/9/2005). These judgements provide directions regarding implementation of para 7 of annexure 1 to AD rules with respect to choice of an appropriate option, and associated obligations thereof.

e. There is no information provided by any Interested Party to consider application of the first proviso of para 7 nor any material is available with the Authority for the same. However as regards the next proviso in para 7, the Authority notes that information on import volume and prices of subject goods from countries other than China during POI is available from the DGCIS data. It is noted that while China accounts for 30303 MT, 44% of total imports of subject goods during POI, the next highest quantity of imports are from Qatar of 16479 MT constituting a share of 24.20% at a average CIF of 1450.48 $/MT. The imports from Germany, UAE, and Japan are 12% (CIF 1530 $/MT); 7% (CIF 1532 $/MT) and 3% (CIF 1524 $/MT) respectively.

f. Qatar being a non subject country with no investigation of AD underway or AD measure in force and with import volume from Qatar being quite significant, the CIF price is thus representative of price payable in India. Also since import price of China is corrected by the existing ADD, the import price from Qatar is not impacted by any dumped price from China. The Authority notes that this option of para 7 to construct the normal value of subject goods is appropriate and is representative of normal value of the subject goods. To evaluate the normal value, the Authority would make appropriate adjustments on various elements like ocean freight, port expenses, inland freight, credit cost, marine insurance and bank charges as per its consistent practice adopting norms as is done consistently in similar/analogous situations for arriving at an ex-factory price. The same is proposed to be compared with exfactory export price of the producer i.e. M/s Kuitun Jinjiang Chemical Industry Co. Ltd. at the same level of trade in accordance with the rule 6(i) of Annexure 1 of AD rules. The Authority proposes to consider adjustments on to an extent of ; Ocean freight (40 $/MT), Ocean insurance (0.5% of CIF), Inland freight (1% of FoB), Port handling (1% of FoB), Credit cost/Bank charges (1% of FoB). The next in the

hierarchy of the options as per para 7 is price actually paid or payable in India for the like product duty adjusted if necessary to include a reasonable profit margin, which the Authority notes needs to be considered only if the option stated above was not available.

g. The Authority notes that as per para 7 of Annexure 1 of AD rules, reasonable opportunity is to be provided to the interested parties on selection of the third market economy country. The Authority notes that in the ongoing NSR investigation, the time limit to complete the case has been fixed as 30/6/2019 in view of the Hon'ble High Courts order in Writ Appeal No. 412 to 414 of 2018. The exporter was provided a prospective POI of 1 year till 31/12/2018. The questionnaire response was filed by the producer/exporter on 8/2/2019. In the rejoinder submissions dated 28/2/2019, the producer/exporter stated that Authority may determine normal value on the basis of the cost of production of the subject goods produced in India methodology for constructing normal value for China while the domestic industry claimed market economy third country export price to India. The Authority undertook desk study of the applicant's questionnaire response to verify the data filed by the exporter and the producer. The Authority holds that in case of a NSR investigation which provides a prospective POI of 1 year, the time to respond to the option of market economy third country selection is quite reasonable with the case completion date being 30/6/2019 as stated above. The post disclosure comments by the exporter, domestic industry and the two importers have been dealt in the subsequent paras under the post disclosure comments and examination.

ASL representing the producer, exporter i.e M/s.Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) and M/s. Foshan Kaisino Building Material Co., Ltd (exporter).

<u>Export Price</u> –

20. The applicant producer (M/s Kuitun Jinjiang Chemical Industry Co. Ltd.) during the POI has sold on an ex-factory basis *** MT at a price of *** $/MT of subject goods through 12 transactions to M/s Foshan Kaisino Building Material Co., Ltd., the exporter. M/s Foshan Kaisino Building Material Co., Ltd has thereafter exported the same quantity to M/s Exim Incorporation and M/s Sanjay Chemicals in India to an extent of *** MT and *** MT respectively. The producer's ex-factory selling price to M/s Foshan Kaisino Building Material Co., Ltd., the exporter to India excluding VAT is claimed as *** $/MT.

21. In support of the above exfactory price, the producer has provided its sale invoices to the exporter and the associated bank certificates. The producer in appendix 3C of the questionnaire filed by them has mentioned the sales price to M/s Foshan Kaisino Building Material Co. Ltd., and have also stated the inland freight. The producer during the desk verification clarified that the invoice raised by them on M/s Foshan is on exfactory basis and provided its sales contract with the exporter indicating delivery term on warehouse self lifting basis. The Authority therefore proposes to reference the exfactory sales price of producer to the exporter net of VAT only with no adjustment on the inland freight at *** $/MT.

22. The exporter has sold these subject goods to the two importers as mentioned above on an ex-factory basis at a price of (*** $/MT). In support of the aforesaid data, the exporter has provided invoices of exporter to the importers, payment received by the exporter, ledger of the two importers showing buying and resale price of subject goods. However no bill of entries have been submitted by M/s ASL, who filed some data related to importers vide letter dated 29/4/2019 in continuation of the desk study undertaken for the applicant's questionnaire. The exporter has claimed an adjustment on bank charges. Further the exporter in appendix 9 of its questionnaire response has claimed that sales of these subject goods to the customers in India are at a profit. The Authority notes that the exporter has though claimed an overall loss in the calendar years 2016 and 2017, it has claimed profitability on an overall basis in POI and also for the PUC in POI. The non PUC has been claimed to be sold on loss during POI.

The exporter in its questionnaire response in the Appendix 1 has claimed exports of some quantity of subject goods in 2017 also, to India. However the exporter has not sold the subject goods during POI and previous three years to any country other than India.

On examining the exports of subject goods to India in 2017 and in POI on parameters of cost of sales, sales value and profitability it is noted that the cost of sales claimed by the exporter declined by 3% in POI as compared to 2017 while selling price increased by 13% and profit per unit by almost 200%. In view of the profitability of the exporter on PUC sales to India during POI, the exfactory price of producer to exporter as stated above is considered appropriate and has been adopted as the exfactory export price. The post disclosure comments of the exporter have been dealt in the subsequent under the post disclosure comment and examination paras.

Representativeness of the export price and quantity of the applicant producer/exporter

23. The Authority notes that both domestic industry and importers have raised issues on representativeness and appropriateness of the export quantity and price of subject goods by the applicant new shipper to India. The Authority also notes the submissions by the applicant new shipper rebutting the above claims and underscoring the provisions of relevant AD rules and the exports made by them at the prevailing price.

24. The Authority notes that total imports of subject goods from China during POI, as per DGCIS and DG-System data corroborate and are 30303 MT and 30278 MT respectively. The exports by the applicant new shipper of *** MT constitute 2 to 3% of total imports from China during POI. The Authority notes that the CIF price of subject goods of the applicant producer/exporter during POI is quite higher as compared to the average price of subject goods from China. Though there are only a few import transactions at a price higher than the applicant producer/exporter, these are of quantities smaller than the applicant producer/exporter and also that a few of these transactions are under the duty free scheme.

25. The Authority notes that in the second SSR, the issue of over invoicing being resorted to by importers was addressed in the finding appropriately by correlating the import price

with the data provided by DRI, imports prices under duty free category, and the China Customs export prices made available to the Authority during the investigation.

26. The Authority notes that domestic industry in its submissions regarding the appropriateness of quantum of exports by a New Shipper and its reasonableness have cited provisions in the Act of other countries. The Authority notes that the applicant has also stated that India's AD rules do not stipulate any threshold of commercial quantities. Further to establish the bonafide of their export price they though had submitted that an independent importer's participation can not be forced, later provided the ledger data of purchase and resale of subject goods by importers to establish that the resale price is with a markup. However bill of entries of the import transactions and the stipulated questionnaire response have not been provided. The Authority however notes that claim of the applicant on sales by the importer being with a markup needs to be seen in context of the pending determination of individual dumping margin for the new shipper, which carries a liability of paying the AD duty by the importer post completion of the new shipper review. The Authority notes that to accord an individual dumping margin to a new shipper, the Authority needs to evaluate both normal value and ex-export price. The Authority notes that the applicant new shipper has cited NSR undertaken in case of Janata Jute Mill underscoring according of an individual dumping margin to the new shipper. The Authority notes that in the same determination the Authority had emphasised the need to establish reasonableness and credibility of export price and constrained by the facts of the case had decided to only accord non-sampled category of AD duty to the applicant.

27. The submissions on this aspect made in response to the disclosure are dealt in subsequent paras.

E. POST-DISCLOSURE COMMENTS BY INTERESTED PARTIES

In accordance with Rule 16 of the Rules supra, the Authority disclosed the essential facts of the present investigation to all interested parties vide disclosure statement issued on 22nd May, 2019, and advised them to file comments thereon by 3rd June, 2019. The date was later extended to 7th June, 2019 at the request of the applicants, who sought additional time to file comments on the choice of surrogate country in addition to other aspects of the disclosure statement. The comments received from the applicant and the domestic industry have been addressed in the present findings to the extent considered relevant.

28. **(i) Submissions made by the domestic industry**

a. Non-confidential version of information filed by the importer is not available to the DI. It was only through the Disclosure Statement that the Domestic Industry came to know about information filed through a letter dated 29/04/2019.
b. By the reason of prospective period of investigation, the applicant has been able to manipulate and doctor the petition by exporting to India at higher prices.
c. The import data as per secondary sources shows that the two importers importing the material from the applicants have imported at relatively higher prices than others.

d. All importers, ones who have comparable volumes with the applicant, and with lesser volumes too, have imported the product at a much lower prices.
e. Only importers that have higher price are – a) Aron Universal (specialized product used in pigments); (b) Noble Laminates Private Limited; (c) Sumilon Industries Limited; (d) Hi-Tech Agro Mills (All have imported about 22 MT or 0.1% of total import from China each; believed to be under Advance license).
f. The China Customs data shows that the applicant has exported the product to India at relatively higher prices as compared to others.
g. This is also evident from the response filed by the exporter (as stated in the disclosure statement) wherein they have increased profits by 200% in shipments made during period of investigation. It is inconceivable that when the cost has declined by 3%, the exporter was able to increase its selling price by 13%, thereby earning 200% higher profit than past.
h. The case is blatantly stage managed, as can be seen from the evidence on record.
i. The producer concerned is not a new producer in China. It was established in 12th September, 2008 and the trader concerned works in sales of tiles and has been picked up for a product having significant domestic and international business without any experience to carter a new market.
j. The importers concerned are also fly-by-night importers, having no past experience of either trading or dealing in Melamine.
k. The importer did not file a questionnaire response at the stage of initiation and do not have interest in the investigation. It seems, post hearing, some internal sensitive documents was selectively passed on to the legal consultants of the Chinese exporter and filed on behalf of importer.
l. A set of new producer and exporter having no experience of selling Melamine in India are fetching a price much higher than the market, with increase in profits by 200%, at 150USD opposed to a new player getting lower price.
m. The representative of the exporter filing confidential data of importer shows a compensatory arrangement between the exporter and the importer and therefore such prices is required to be disregarded. Reliance is placed on Kumho decision of Designated Authority and CESTAT.
n. The claims of the Applicant are totally distant from the law and practice of the Authority on multiple levels, especially with regards to onus of establishing claims. There are no merits in the claims made by the Applicant, until established by evidence, opposed to the Domestic Industry proving them otherwise.
o. The exports made by the applicant are merely 2-3% of the total imports from China into India, which clearly shows that these transactions are stage managed.
p. The exporter has grossly and intentionally suppressed information in the questionnaire response filed, including claimed expenses, basis and terms of sale.
q. The importer has not filed a questionnaire response, but has just irregularly filed information as per its convenience with complete disregard of the law and practice of the Authority. The said information is not available in the public file either.
r. DRI after conducting investigation found that the importers, including EXIM Corp. were overvaluing the product to evade anti-dumping duty. This raises serious questions on the reliability and credibility of the import price of these importers.

s. The Applicant has filed for individual dumping margin without a claim or evidence for Normal Value, assuming that the Authority shall make efforts for the same.
t. No clarification or claim has been given for MET by the exporter further complicating the determination of individual dumping margin. The Authority being quasi-judicial cannot hunt by itself for determination of normal value under Rule-7 as per the law.
u. The domestic industry holds no obligation to come to the rescue of the applicant and make efforts in providing information relevant to determination of normal value.
v. Since applicant has requested for individual margin of duty, the obligation is on the applicant to provide relevant information for determination of normal value with relevant evidence and supporting information of normal value and export price.
w. In discharge of its obligation, the applicant has merely stated in its rejoinder submissions while replying to the arguments of the domestic industry, that the normal value should be determined on the basis of cost of production.
x. The same is extremely belated at this stage of the investigation, where the Authority would go back to the stage of initiation and call relevant information from the domestic industry.
y. By not providing any information on normal value, the exporters has in a way became non-cooperating in the present investigation, and the authority is required to terminate the investigations without giving individual duty.
z. The Designated Authority holds no obligation to collect evidence of normal value and the applicant nowhere stated that it was not claiming normal value based on its data/information. Therefore the Authority can only terminate the investigations holding that there is insufficient information & evidence on record to determine dumping margin.
aa. The Authorities have an obligation to make decisions on the basis of the best information available even where evidence has been supplied by the interested party, if the interested parties refuses access to and otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation. However, all reasonable steps should be taken by the authorities of the importing countries to avoid the use of information from unreliable sources. (WTO Egypt-Steel Rebar)
bb. The Authority, in the absence of any information on normal value, has relied upon Qatar import price to India as per DGCI&S data.
cc. The DGCI&S data is reliable information and is being used consistently by the Designated Authority. Also there has been no evidence contrary to the same.
dd. Without prejudice to the above, use of export price from Qatar is not inappropriate in the facts & circumstances of the present case, for determination of normal value.
ee. According to the hierarchy laid down in Para 7, the normal value shall be determined on the basis of the price from a third country to other countries, including India since no information has been provided by the applicant for constructed normal value in appropriate third country.
ff. A comparison of practices applied by EU, US, Australia, Korea, Mexico and Brazil for determining appropriate third country shows the following broad factors used – (a) Scale of manufacturing and export from the analogue country, (b) Volume of imports from the analogue country, (c) Level of development, economic and product concerned, (d) Product produced in the analogue country, (e) manufacturing process, (f) Openness of the market, (g) Similarity in products.

gg. It cannot be said that Qatar is not an appropriate surrogate country in the present case. Indeed, Qatar is the most appropriate market economy country.

hh. Qatar is one of largest producer and exporter of the subject goods in the world and has the second highest exports of the subject goods to India, only below China PR.

ii. The subject goods produced in Qatar are like products with the goods, and the manufacturing process is identical with the producers, in China PR and in India.

jj. Moreover, Qatar is comparable to China PR in terms of level of economy and level of development of the product concerned and the market for production, sale and export for the product concerned is open in Qatar and free of any other non-market forces.

kk. The domestic industry has no qualms for adopting import prices of other countries into India like Germany, Japan and UAE, since the import price from these countries are even higher than Qatar.

ll. Factors like (a) Level of development of the product under consideration, (b) Production processes, (c) Scale of manufacturing, (d) Raw material availability are focused upon when normal value is based on domestic price, therefore the comparability of markets and price is very important.

mm. Parameters relevant when the normal value is on the basis of price from third country to India are volumes of exports and the fact that the third country is not subject to dumping investigation. Market comparability of subject country and analogue country is not important since the price adopted is export price in India, therefore only Indian market is relevant.

nn. Only when information with regard to cost or price in a market economy third country is not available, can price from market economy third country to other countries, including India be considered. If not, cost or price in India can be considered.

oo. Under Rule 7, the precise hierarchy has been laid down. Thus, it is not permissible under the law to consider any methodology for normal value without exhausting the sequence.

pp. The applicant has not contended how Qatar price is not appropriate or should not be adopted for export price to India. The country functions in the ordinary course of trade

qq. The investigation period holds absolute sanctity for determination of normal value and export price. Not only POI has been fixed in the instant case, but also, the Authority is barred from considering some data/information for the period beyond POI.

rr. Decision of the Authority to use of data outside the POI for determination of normal value was challenged at the CESTAT and the decision was over turned in Thai Acrylic Fibre Co. Ltd. v. Designated Authority.

ss. The claim of applicant for use of cost in India for normal value is extremely belated and such a claim cannot be accepted at this stage of the investigation.

tt. Moreover, the information and data pertaining to cost in India is not available with the Authority for the POI, and no new information can be brought on record at the given stage in the investigation.

uu. The conduct of Applicant shows no intent to provide any information for determination of normal value, rather shows the belief that is the Authority that should hunt for such information.

vv. Also, at this stage, the Designated Authority cannot ask domestic industry to provide information relating to determination of normal value.

ww. The Authority has already issued the Disclosure Statement, and requesting the new information, along with preparation of the same working by the Domestic Industry followed by the analysis and due process of law, will add another three months to the investigation at the least.

xx. Since the POI is non-financial year, the relevant information in not available in public domain either.

yy. Also, the raw material constitutes only 45% of the total cost and hence only raw material indexation cannot be considered appropriated for the determination.

(ii) <u>Submissions made by the NSR applicant (producer/exporter)</u>

a. Disclosure statement is the first communication by the authority that Qatar will be considered as a third country market economy for China. No details on the mandatory level of development have been provided.

b. Para 7 provides level of development be taken into consideration based on reliable information. The Authority has relied on the quantum of imports from Qatar to India for such a selection, which is inappropriate.

c. Qatar as a surrogate third market economy country is contrary to the approach in Para 7 and discriminatory to the Applicants.

d. No relevant information or evidence on record with respect to the proposed selection of Qatar as surrogate country has been provided.

e. It has been disclosed whether complete and exhaustive data on domestic sales or third country export sales and cost of production in Qatar is on record.

f. Such information is mandatorily required by the Authority in past cases to construct the normal value on the basis of third country exports or prices.

g. No such information/data is available in the present case nor has any attempt to get the relevant information from the suggested third country market economy been made either by the Domestic Industry or the Designated Authority.

h. In such an absence, the Authority's proposal to take Qatar as a surrogate country is not in line with the legal provisions or its own consistent approach followed in the very same case.

i. In the past investigations, the DGCI&S import data of third countries were present with the Authority. However, the Authority, considered the DGCI&S data as not appropriate to determine the normal value based on the third country market economy export prices.

j. The most suitable way of calculation of normal value in a NSR investigation is to extend the methodology adopted by the Authority in the original as well as the sunset review investigations conducted by the Authority in the very same case. Any other methodology will lead to two sets of very different normal values for the exporters which will be discriminatory in nature.

k. The Domestic Industry in the sunset review case stated that Normal Value cannot be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not publicly available.

l. Since the Authority was of the opinion of taking Qatar as a surrogate country and there is enough evidence on record for the same, the burden of proof to demonstrate the relevance and sufficiency of the same lies with the Authority. No information has been provided in

that regards, and in absence of such data and information, the applicants are unable to offer any further comments.

m. The Applicants requested for the rejoinder submissions of the Domestic Industry. However the Authority refused to share the same citing the past practice. The information contained in the rejoinder is of particular importance to the case as it has been used to select Qatar as an appropriate third country.

n. Since the submission is not shared, the applicants are not in a position to offer their comments in an effective and reasonable manner.

o. The level of development of Qatar is not comparable to that of China. The level of development of a country is measured by international organizations like UNDP, World Bank, IMF in terms of factors such as GDP per capita, Human Development Index, etc. The Authorities worldwide use such factors for comparison. However the disclosure statement does not suggest any such methodology that has been used.

p. The disclosure statement is silent on the level of development of the Industry in the two countries and their comparability.

q. Proposed selection of the third country market economy and the procedure followed is in complete contrast to the observations and the decision of the Hon'ble Supreme Court in the case of Shenyang Matsushita S. Battery Co. Ltd.

r. The selection of surrogate country for the determination of normal value is a process to be followed at the very beginning of the investigation. The Authority has not followed other procedures mandated for selection of third country market economy as well.

s. A determination with regard to the ordinary course of trade and arms' length transactions cannot be made unless the complete and detailed data/information with respect to such surrogate country is on record and with the Authority.

t. No hearing has been granted to the applicants with respect to the issue of taking Qatar as a surrogate country. Paucity of time cannot be reason for taking away the right of the applicant to be heard.

u. Perusal of the list of NSR investigations shows the Authority has computed normal value for applicants from nonmarket economy on the basis of their cost-plus basis. There is no reason to deviate from this well-established practice of the Authority and on the ground of equality and equal protection of law.

v. US authorities evaluate the economic comparability for selecting a surrogate country and the Australian anti-dumping manual provides for consideration of macroeconomics indicators to select the appropriate surrogate country. No such factor has been considered by the Authority in its proposal to consider Qatar as a surrogate country for China. There is a huge difference in the level of development indicators of Qatar and China.

w. Taking Qatar as a surrogate country for China is against principles of equality and equal protection of law, against the Anti-dumping Rules and the Anti-dumping Agreement.

x. Prices from Qatar are higher because the market prices in India are also higher to the extent of the anti-dumping duties on imports from China.

y. To arrive at a fair realization in the Qatar market, the actual prices prevailing in Qatar should be taken or the CIF prices be adjusted to the extent of the anti-dumping duty applicable on imports from China.

z. The ocean freight from Qatar to India also need to be revised to USD 64.47/MT from USD 40/MT.

aa. Despite providing all the information of resale price by unrelated importer at the request of the Authority, the Authority proposed to take an approach contrary to past practice.

bb. The information can be checked from the DGCI&S and DG System as was done for the transaction-wise exports made by the producer and exporter.

cc. Consideration of export price of producer is directly in contradiction with the approach of the Authority taken in the case of Uncoated Copier Paper. In that investigation, responses of the exporters were rejected on the basis that the unrelated importers had not provided details. However such information is available in the instant case.

dd. If the Authority wishes to consider the export price from producer, then also VAT needs to be adjusted to the ex-factory export price.

ee. Importers (Para 14) had addressed the Authority during the oral hearing but did not submit any written submissions which is a mandatory requirement pursuant to the oral hearing. In the absence of any written submissions or claim, the Authority has proposed to rely upon certain information supplied by the said parties the copies of which have not been served to the applicant or made available in public file.

ff. The Authority has not asked the other importers to provide any evidence to substantiate their claims while detailed information was called from the exporters as well as their importers. Clarification is required on whether such importers filed questionnaire responses or provided resale price information or bills of entry or any account ledger with the Authority.

gg. It is to be seen why the importers, are supporting the Domestic Industry for imposition of anti-dumping duties. Also, one of the said two importers is facing DRI investigation for indulging in overvaluation of subject goods imported from China in order to avoid payment of anti-dumping duty leviable on such imports.

hh. If any producer/exporter has not dumped the goods, it would be entitled to zero or lower duty. It is immaterial whether the dumping margin is determined as a part of the original investigations or is done in terms of Rule 22.

ii. The exporter has given details of transactions, which has been verified by the Authority. Also, the importers have provided resale pricing information.

jj. Other interested parties have not filed any evidence to the contrary questioning the export price of the applicants. In absence of such information the dumping margin should be calculated on the basis of the said information.

kk. The export prices are most reasonable and genuine. There are several importers who have undervalued their imports possibly to take care of the existence of antidumping duties and some of these importers are also facing DRI investigations.

Comments by importers

(iii) M/s Sandeep Organics Pvt. Ltd.

i. To Evade ADD, Indian importer, Chinese Exporter & Chinese producer has done over invoicing of PUC. It can be determined by high profits by the Chinese exporter.

ii. Whereas, the Indian importer has sold PUC under profit, the importer has not considered liability of guarantee of ADD. If liability of guarantee of ADD is considered, PUC is sold at loss by the Indian importer.
iii. Export declaration should be submitted to the Authority.
iv. Other Chinese producer / Exporter data should be reconciled.
v. Other Indian importer data should be reconciled.
vi. Personal verification of Chinese exporter & Chinese producer should be done.
vii. Provisional assesed & out of charge bill of entry to be submitted by the importer.
viii. Auditor verified sale invoice, profit loss statement of PUC should be submitted along with purchase order / sales contract / proforma invoice / payment & other related documents.
ix. Why exports of PUC in NSR were stopped after 31st December 2018?
x. Importer have not paid ADD, it is loss to the government. They have just given the guarantee. Guarantee should have been mentioned on the accounting statements. Such related documents to be submitted.
xi. Why only 2 importers are involved?
xii. Misuse of law should not happen by taking undue advantage of loopholes in outdated NSR.

(iv) M/s Sunita Commercials Pvt. Ltd.

It appears that Authority is proposing to accord an individual dumping margin to this exporter. If so, our previous submissions and submissions made by the domestic industry, which adequately establishes that the credential of the exporter, the export price, the importers, the import price, everything as highly suspicious may be referred.

Since we have been regularly importing and selling Melamine in the country, we are well aware of the market activities and believe that this petition is an attempt to seek no or lower duty and therefore reject this request for individual duty.

F. Examination by the Authority

29. **Computation of the Normal Value (NV)**

The Authority notes the submissions made by various Interested Parties on the methodology of computing Normal Value and holds that the applicant Producer/Exporter seeking New Shipper Review did not file the Market Economy Treatment questionnaire to claim Market Economy Status, even though the Producer/Exporter had filed the applicant for grant of an individual Dumping Margin to them as per Rule 22. Therefore the Authority has to resort to the Para 7 of the Annexure 1 of the Anti- Dumping Rules to consider an appropriate Normal Value Methodology in the instant case. None of the Interested Parties including the applicant Producer/Exporter suggested a market economy third country for considering the price or constructed value in such a country. The Producer/Exporter, while choosing not to claim MET, at the same time did not suggest any market economy third country to consider applying the first proviso of para 7, either in the petition or when EQR was filed.

The second proviso of Para 7 of Annexure 1 suggests price from such a third country to other countries to other countries including India or where it is not possible on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted if necessary to include a reasonable profit margin.

In this regard the Authority notes that Para 7 further clarifies that "An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments".

The Authority notes that it was only post Oral Hearing in February 2019 that the applicant Producer/Exporter suggested adoption of Constructed Normal Value methodology based on cost of production of India industry and the domestic industry suggested/adoption of imports from the third country i.e Qatar for computing the normal value. The Authority notes that besides submission on the basis of choice of the 3rd country market economy, the applicant producer/export have also contested that reasonable time and rejoinder copies have not been provided to them. The Authority notes that in an 'NSR' case as compared to an original investigation, where POI has been as prospective to enable the applicant producer/exporter to export in accordance with rule 22 of AD rules, the Authority only after applicant producer/exporter and other interested parties filed their submissions/responses as the case may be, could have provided its approach on adoption of the methodology for normal value. The Authority disclosed its approach in the disclosure statement dated 22/5/2019 and on request of the applicant producer/exporter also extended time to file comments as well till 7/6/2019. In the factual matrix of the case, the Authority holds that reasonable opportunity has been provided to the interested parties including the applicant producer/exporter to respond to the choice of methodology to determine the normal value. The Authority reiterates that rejoinder are not exchanged as per Authority's consistent practice and that all such submissions were provided in the disclosure. Also the Authority has addressed all relevant submissions made post oral hearing and the disclosure and that no further hearing is considered necessary.

The Authority notes that the producer/exporter has stated that Authority has not followed the established process to select surrogate country which should be done at the beginning of the investigation. The Authority reiterates that this 'NSR' being an investigation on a prospective POI of 1 year and with completion period of 18 months, the count down starts only after the response is filed by the applicant producer/exporter. Authority could not have imagined that the applicant producer/exporter who has sought NSR would not file MET Questionnaire and nor would suggest any options prescribed under para 7 to annexure1. The suggestions on normal value computation were made both by producer/exporter and the domestic industry post oral hearing which the Authority examined keeping in view the prescribed hierarchy in para 7 of Annexure 1 and various guiding judgements in this regard.

As regards Qatar not being an appropriate country for Normal Value in view of the level of development being different, the Authority holds that Qatar exports to India are next to China in terms of Quantum. The 'level of development' comparison as stated in para 7 of assumes relevance if prices and constructed value in Qatar is considered. Qatar's export prices to India are not contingent on the level of development of Qatar but is established by benchmarking the prices of the domestic industry and other exporting countries to India. The last proviso of para 7 also requires consideration of price paid or payable in India. As Qatar happens to be a non dumped source with volume next to the subject country which is subjected to the levy of ADD to correct the unfair trade, its choice is appropriate as per para 7 (Annexure 1) provision of AD rules. The applicant Producer/Exporter has submitted that CIF price of import from Qatar be adjusted to an extent of ADD on import from China which the Authority holds is not justified as the import price from China has been corrected to a fair and non injurious level by the levy of ADD after adopting a due process as per rules. The export price from other sources also bench mark the corrected fair price from China.

The Authority further notes that the Producer/Exporter has thereafter also contested the ocean freight being adopted while computing exfactory export price of Qatar to India which is one of the adjustments to be considered for purpose of Normal Value computation. The Authority had proposed ocean freight based on the data available with it in one of the past investigations by an exporter from Qatar which was verified by the Authority. The evidence provided by the applicant was further correlated with the submissions and evidence provided by the Domestic Industry and Authority holds that the ocean freight considered by the Authority and stated in disclosure is reasonable and appropriate.

The Authority therefore confirms the methodology on Normal Value computation as stated in the disclosure and after allowing adjustments on ocean freight, port expenses, inland freight, credit cost, ocean insurance bank charges and additionally commission (1.5% of FOB) as submitted by the producer/exporter as per its consistent practice by adopting norms as is done consistently in similar/analogous situations from the CIF price from Qatar. The Authority confirms the 'Normal value' methodology incorporating aforesaid adjustments.

30. **Ex-factory Export Price**

The Authority notes that the applicant producer/exporter has submitted that VAT amount which has not been reimbursed to the exporter be adjusted and accordingly ex-factory export price be determined. The Authority holds that in the instant case, the questionnaire response of the exporter nor the producer lodge a claim for this adjustment. Further with the exporter's sales of subject goods having been identified as profitable, the producer's sales price to the exporter net of taxes (VAT) at ex-factory is therefore the relevant ex-factory export price for producer as the computation of dumping margin is carried out for the producer. The applicant producer/exporter has not submitted as to why this fundamental approach to evaluate ex-factory export price for producers is not appropriate especially when the exporter's price to India has been taken as profitable thereby indicating that producer to exporter price is reliable.

The Authority therefore confirms the methodology and computation of ex-factory export price for the producer as mentioned in the disclosure as *** $/MT.

The dumping margin for the producer based on the aforesaid is evaluated as (30-35%).

31. **Other issues**

The Authority notes submissions made by various interested parties on the aspect of over and under invoicing and that responses of importers other than buyers/importers from the applicant producer/exporter be obtained, and prices verified. The Authority notes that none of the importers have filed structured response to this investigation. While some data has been filed by the advocate for the producer/exporter for their two importers/buyers in India, no structured response has been filed even by them. The Authority for the purpose of examining the import price pattern of subject goods in India during POI obtained transaction wise data from DGCIS and as well as DG-Systems. The broad analysis of the same was also indicated in the disclosure.

As regards over invoicing, the Authority holds that it has evaluated the ex-factory export price of the producer as per its selling price to the exporter, the concerns on over invoicing by the exporter, if any, are taken care of.

32. **Conclusions**

i. The Authority holds that quantity of export by the producer is quite reasonable to reference this sales to the exporter i.e M/s Foshan Kaisino Building Material Co., Ltd (exporter) to evaluate the ex-factory price of export destined to India.

ii. The producer has dumped the subject goods during the POI.

iii. As per rule 22, the extent of dumping margin as stated above in para 30 is awarded to the producer i.e M/s Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) as the Anti-dumping duty.

33. **Recommendations**

In view of the above, the ADD stated in duty table below is recommended in respect of parties mentioned below:

All other aspects of duty imposed vide C.No. No. 2/2016-Customs (ADD) dated 28/1/2016 remains unchanged.

Duty Table

Sl. No.	Tariff item	Description of goods	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of measu-rement	Currency
1.	29336100	Melamine	China PR	China PR	M/s. Kuitun Jinjiang Chemical Industry Co. Ltd.	M/s Foshan Kaisino Building Material Co., Ltd.	319.04	MT	US$
2	29336100	Melamine	China PR	China PR	M/s. Kuitun Jinjiang Chemical Industry Co. Ltd.	Any other than M/s Foshan Kaisino Building Material Co., Ltd.	331.10	MT	US$
3.	29336100	Melamine	China PR	Any country other than China PR	M/s. Kuitun Jinjiang Chemical Industry Co. Ltd.	Any	331.10	MT	US$

34. Exports made by M/s Foshan Kaisino Building Material Co., Ltd (exporter) of goods produced by M/s Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) in pursuance of C.No. No. 11/2018-Customs (ADD) dated 20/3/2018 may be regularised as per the AD recommended in para 33 above. This duty is coterminous with the AD duty imposed vide C.No. No. 2/2016-Customs (ADD) dated 28/1/2016.

35. **Further Procedure**

An appeal against the order of the Central Government that may arise out of this Final Finding Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Sunil Kumar)
Additional Secretary & Director General