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**F. No. 6/8/2022-DGTR
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: 28th March 2024

Case No. A.D (OI)-08/2022

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of “alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition” (HRBC) originating in or exported from China PR and Korea RP.

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Subject: Anti-dumping investigation concerning imports of “alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition” (HRBC) originating in or exported from China PR and Korea RP.

F. No. 6/8/2022-DGTR: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the ‘Act’) and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter referred as the ‘AD Rules’ or the ‘Anti-dumping Rules’ or the ‘Rules’);

A BACKGROUND OF THE CASE

1. DOZCO (India) Pvt. Ltd. (hereinafter referred to as the ‘applicant’ or the ‘domestic industry’) filed an application before the Designated Authority (hereinafter referred to as the ‘Authority’), in accordance with the Customs Tariff Act, 1975 and the Anti-Dumping Rules for the initiation of an anti-dumping investigation concerning imports of “**alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition**” (hereinafter also referred to as the ‘product under consideration’ or ‘PUC’, or the ‘subject goods’) from China PR and Korea RP (hereinafter also referred to as the ‘subject countries’).
2. The Authority, on the basis of sufficient *prima facie* evidence submitted by the applicant, issued a public notice vide Notification No. 6/8/2022-DGTR dated 30th September 2022, published in the Gazette of India – Extraordinary, initiating the subject investigation in accordance with Section 9 of the Act read with Rule 5 of the AD Rules, 1995 to determine the existence, degree and effect of alleged dumping of the subject goods and to recommend the appropriate amount of anti-dumping duties, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B PROCEDURE

3. The following procedure has been followed during the investigation:
 - a. The Authority notified the embassies of both the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules, 1995.
 - b. The Authority issued a public notice dated 30th September 2022, published in the Gazette

of India – Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods from the subject countries.

- c. The Authority sent a copy of the initiation notification dated 30th September 2022 to the embassies of both the subject countries in India, the known producers and exporters from the subject countries, the known importers/users of the subject imports in India, other domestic producers in India and other interested parties. The interested parties were requested to provide relevant information in the form and manner prescribed in the initiation notification and make their submissions known in writing within the time limits prescribed in the initiation notification.
- d. The Authority also provided a copy of the non-confidential version of the application filed by the applicant to the known producers/exporters, known importers/users and to the embassies of both the subject countries in India in accordance with Rule 6(3) of the AD Rules, 1995 through its email dated 15th November 2022.
- e. The embassies of the subject countries in India were also requested to advise the exporters/producers from the subject countries to submit their responses to the questionnaire within the time limit prescribed by the initiation notification. The embassies of the subject countries were also sent a copy of the letter and questionnaire sent to the producers/exporters along with the names and addresses of the known producers /exporters from the subject countries.
- f. The Authority sent questionnaires to the known producers/exporters in the subject countries in accordance with Rule 6(4) of the AD Rules, 1995.
- g. In response to the above notification, the following producers/exporters from the subject countries have submitted the exporter questionnaire responses:

Subject country	Producer/Exporter	Abbreviation
China PR	Ningbo Yinzhou Get Machinery Ltd.	Ningbo
	Yantai Eddie Precision Machinery Co., Ltd	Eddie
Korea RP	Hyundai Everdigm Corporation	Everdigm
	Daemo Engineering Co. Ltd.	DAEMO
	Soosan Heavy Industries Co., Ltd.	Soosan
	FEEL Industrial Engineering Co. Ltd.	FEEL
	HANSUNG SPECIAL MACHINERY CO., LTD	Hansung
	D and A Heavy industries Co., Ltd.	D&A

- h. The producers/exporters from the subject countries who have not submitted the questionnaire response or have not cooperated in the investigation have been treated as

non-cooperative in the investigation.

- i. The Authority also sent questionnaires to the known importers/users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules, 1995.
- j. The following importers/users submitted the importer/user responses to the questionnaire issued by the Authority:

S. No.	Details of the importer/user	Abbreviation
1.	FYN Technologies Private Limited	FYN
2.	Fine Equipment (India) Private Limited	FINE

- k. Extension requests made by the interested parties were considered and granted by the Authority wherever appropriate.
- l. The Directorate General of Systems & Data Management (DG Systems) was requested to provide transaction-wise details of the imports of the subject goods for the past injury period and the period of investigation. The same has been received by the Authority and has been considered in these final findings.
- m. In accordance with Rule 6(6) of the AD Rules, 1995 the Authority provided an opportunity to the interested parties to present their views orally regarding the subject investigation through a public hearing held via video conferencing on 28th July 2023. The interested parties who presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The interested parties were further directed to share the non-confidential version of the written submissions submitted by them with the other interested parties.
- n. The statutory deadline for completion of the investigation was initially 29th September 2023. The Authority requested the Central Government to extend the timeline for completion of the investigation in terms of the proviso to Rule 17(1)(a). Vide notification dated 29th August 2023, the Central Government extended the timeline for completion of the investigation till 28th March 2024.
- o. The non-injurious price (hereinafter referred to as the 'NIP') has been determined based on the cost of production and reasonable profits of the subject goods in India, from the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules, 1995 so as to ascertain whether anti-dumping duties lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- p. The information submitted by the applicant has been examined and verified during on site-verification to the extent deemed necessary and has been relied upon for the present

final findings.

- q. The examination and verification of the information submitted by the cooperating producers/exporters from the subject country were also carried out to the extent deemed necessary and have been relied upon for the purpose of the present final findings.
- r. The period of investigation (POI) for the purpose of the present investigation is 1st April, 2021 to 31st March 2022 (12 months). The injury period for the present investigation is 1st April 2018 – 31st March 2019, 1st April 2019 – 31st March 2020, 1st April 2020 – 31st March 2021 and the POI.
- s. The Authority made available the non-confidential version of the evidence presented by various interested parties on mutual exchange basis in the manner prescribed through Trade Notice No. 01/2020 dated 10th April 2020. The information/submissions provided by the interested parties on a confidential basis were examined concerning the sufficiency of such confidentiality claims. On being satisfied as to the sufficiency of the confidentiality claims filed by the interested parties, the Authority has considered such information/submissions as confidential. In case of non-acceptance of confidentiality claims, the interested parties were directed to submit the non-confidential version of the same and circulate it to the other interested parties.
- t. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported with evidence and considered relevant to the present investigation.
- u. A disclosure statement in terms of Rule 16 of AD Rules was issued on 20th March 2024. Keeping in view the impending deadline interested parties were granted time till 24th March, 2024. None of the interested parties in the post-disclosure comments or through any other communication with the investigation team after the issuance of the disclosure statement raised concerns regarding their inability to respond within the stipulated deadline or requested additional time for submission of post-disclosure comments. Thus, sufficient opportunity was afforded to all interested parties to present their comments on the disclosure statement.
- v. ‘***’ in this Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under Rules 7 of AD Rules, 1995.
- w. The exchange rate for the POI (April 2021 - March 2022) adopted by the Authority for the subject investigation is 1 US \$= Rs. 75.37

C PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. The product under consideration (hereinafter also referred to as the “PUC”) as defined at the stage of initiation was as follows:

“The product under consideration for the present investigation is “alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition” (hereinafter referred to as the “subject goods” or the “product under consideration”). In common usage, the product under consideration is known as hydraulic breaker, hydraulic rock breaker, chisel/tool. The PUC is usually imported under the following description but not limited to the following:

Alloy Steel Chisel: imported as Rock Chisel Teeth, Tooth Rock Chisel, Breaker Tool, Hydraulic Hammer (Tools), Hydraulic Rock Breaker Wedge Point for Working Tool, Chisel Blunt, Blunt, Chisel etc.

Hydraulic Rock Breaker: Hydraulic Rock Breaker (with and without Chisel), Rock Breaker with & without Bulk, Hydraulic Rock breaker Assembly Kit, Rock breaker spare body assembly, Hydraulic Rock Breaker Fine, Hydraulic Rock Breaker, Rock Breaker, Box Type Hydraulic Rock Breaker etc.”

5. Various comments on the scope of the PUC and the PCN methodology were received from the interested parties and accordingly, a meeting to discuss the same was held on 6th December 2022 Taking into consideration, the views, and submissions of the said interested parties, it was clarified through the scope of PUC and PCN Methodology Notification (hereinafter referred to as the “Scope Notification”) dated 16th June 2023¹, that the scope of the PUC is limited to the following ‘assemblies’, ‘sub-assemblies’ and ‘components’² of hydraulic rock breakers:

Assemblies/sub-assemblies	Pictorial Representation of Component ³
a. Front head	
b. Back head	

¹ F. No. 6/8/2023-DGTR, ‘Scope of the Product Under Consideration and Product Control Numbers’, dated 16th June 2023.

² Throughout this document, the words ‘assembly’ and ‘sub-assembly’ have been used interchangeably.

³ The photos are for representative purposes only. The form of the actual assemblies/sub-assemblies may vary.

Assemblies/sub-assemblies	Pictorial Representation of Component ³
c. Piston for hydraulic cylinder or rock breaker	
d. Cylinder body or hydraulic unit (Hydraulic body consists of front head, back head, cylinder and piston)	
e. Bracket	
f. Frame	
g. Cylinder for hydraulic rock breaker	 

6. Taking into consideration, the views, and submissions of the said interested parties, the following PCN methodology was also notified vide the Scope Notification dated 16th June 2023:⁴

Criteria	Range	PCN
Product Category	Hydraulic Rock Breaker with Chisel	HRC
	Chisel/Tool/Blunt/Moil	CHI
	Hydraulic Rock Breaker without Chisel	HRB
Diameter of	≤75mm	D1
	> 75mm ≤100 mm	D2

⁴ F. No. 6/8/2023-DGTR, 'Scope of the Product Under Consideration and Product Control Numbers', dated 16th June 2023.

Criteria	Range	PCN
Tool/Chisel (This applies to Chisel as well as to Hydraulic Rock Breakers without Chisel)	> 100mm ≤ 150 mm	D3
	>150mm	D4

C.1 Submissions made on behalf of the domestic industry

7. The following submissions have been made on behalf of the domestic industry regarding the product under consideration:
- a. The initiation notification covered assemblies/sub-assemblies of Hydraulic Rock Breakers within the scope of the PUC. The product scope always included assemblies and sub-assemblies.
 - b. The intent behind providing the product description based on which the PUC is being imported in the initiation notification is to cover all forms within the scope of this investigation.
 - c. The description given in the initiation notification was not exhaustive and included assemblies as well as sub-assemblies in the PUC.
 - d. The clarification of the product scope merely mentions the list of the assemblies/sub-assemblies and thereby intended only to limit the scope of the present investigation.
 - e. In the case of *Huawei Technologies v. Designated Authority*⁵, the Ld. CESTAT affirmed that the Authority must include parts and components in the scope of the PUC, which would make the duty ineffective, if not included.
 - f. In *Marino Panel Products Ltd. v. Designated Authority*⁶, the Ld. CESTAT upheld the inclusion of a large size of medium-density fiberboards within the scope of the PUC although the domestic industry did not manufacture them.
 - g. In the anti-dumping investigation concerning *Industrial Laser Machines*, the Authority included Laser Cutting, Laser Marking, and Laser Welding machines in fully assembled, CKD and SKD forms of the product within the scope of the PUC.
 - h. In several investigations of the DGTR, such as *Glass Fibers from China PR*, *SDH Equipment from China and Israel*, *Solar Cells from Malaysia China PR*, *Chinese Taipei*, and *the USA*, *Castings for wind-operated electricity generators from China PR*, the Authority has given a broad definition of the PUC to ensure that the purpose of the duty

⁵ 2016 SCC Online CESTAT 404.

⁶ 2016 (334) E.L.T. 552.

is given effect to.

- i. The EU and the USA, in several anti-dumping investigations have also defined the PUC in such a manner that it includes parts, assemblies, and components.
- j. In *Huawei Technologies Co. Ltd. v. Designated Authority*, the Ld. CESTAT held that it is not necessary that all types of products covered by the PUC must be alike to each other or even necessarily constitute a homogenous group.
- k. Rock breaker is a capital good and consists of several assemblies and sub-assemblies. These sub-assemblies and assemblies can be imported to circumvent anti-dumping duties once levied.
- l. By not extending the duties to the seven assemblies/sub-assemblies, it is highly probable that importers may import the product in pieces and assemble the product in India.
- m. In the anti-dumping investigation concerning *Axle for Trailers from China PR*, the Authority did not extend the scope of the product to include certain specific parts within the scope of the initial investigation. Subsequently, the Authority was informed by the Commissioner of Customs that there was an abnormal increase in imports of parts. Thereafter, the Authority had to initiate an anti-circumvention investigation and recommend the extension of the duty to parts of the axle for trailers.
- n. An exporter of hydraulic rock breakers may engage in a similar exercise. The import data also indicates that there is a constant trade flow of various assemblies/sub-assemblies of rock-breakers.
- o. The assemblies/sub-assemblies are, by design, a component of rock-breakers and have no other end uses. The conversion cost incurred in assembling the rock breakers is extremely low.
- p. Chisels and hydraulic rock breakers are a part of the same investigation which is consistent with the Authority's practice.
- q. The WTO Panel, in *EU – Safeguard Measures on Certain Steel Products (DS595)*, reaffirmed the wide discretion of the investigating authority to define the PUC in an investigation. The panel stated that the Authority could include two separate products under one investigation. The same principle was explained by an earlier panel report in *EC – Salmon (Norway)*.
- r. In the case of *Suncity Sheets Pvt. Ltd. v. Union of India*⁷, the Ld. CESTAT upheld the scope of the PUC, which included both hot-rolled and cold-rolled products, stating that there is no requirement for inter-se substitutability of various types of subject goods.
- s. In the *Sunset Review of Anti-Dumping Duties on Glass Fiber from China PR* and in the

⁷ 2017 SCC OnLine Del 9412.

Anti-dumping Investigation on Veneered Engineered Wooden Flooring from China PR, Malaysia, Indonesia, and the EU, different products were included and investigated together since all products were manufactured together.

- t. Eddie has relied on a minority opinion in the case of *Saint Stephen's College v. the University of Delhi*⁸.
- u. Every statute must be interpreted in its literal sense. It is evident from a literal reading of the product description that the “hydraulic rock breaker assembly kit” is included within the scope of the PUC. “Assembly kit” and “spare body assembly” are not synonymous with “fully assembled rock breakers”.
- v. The assertion that the domestic industry has not furnished data regarding assemblies/sub-assemblies in its application is incorrect. Annexure-18 of the petition details the import segregation methodology, which includes fully assembled parts, i.e., “assemblies/sub-assemblies.”
- w. The Authority is not prohibited under law to expand the scope of the product scope.
- x. The manual of standard operating practices does not override any Trade Notice or circular and may not be used in any dispute or litigation.
- y. Assemblies and sub-assemblies were always a part of the product under consideration. The initiation notification, which was published in the Official Gazette, included “hydraulic spare body” and “hydraulic assembly kits” – therefore, parties were given ample indication as to what is covered within the scope of the PUC at the stage of publication of the initiation notification in the official gazette.
- z. Under Article 5.5 of the Anti-Dumping Agreement, the Authority is only required to notify the exporting country during the initiation. The initiation notification comprised the definition of the product under consideration; the onus is, therefore, on the exporting WTO members to notify the interested parties.
- aa. The substantive obligation to notify the exporter-producers of the investigation only arises during the course of the investigation.
- bb. The Republic of Korea has made detailed oral and written submissions – indicating that they were well aware of the definition of the PUC and the clarification dated June 16, 2023.

C.2 Submission made by the other interested parties

- 8. The *Trade Legal Affairs Divisions in the Ministry of Trade, Industry and Energy of the Government of Korea* made the following submissions concerning the scope of the product

⁸ (1992) 1 SCC 558.

under consideration:

- a. The initiation notification dated 30th September 2022 defined the scope of the PUC as alloy steel chisel/tool and hydraulic rock breakers in fully assembled condition. However, nine months after the initiation of the investigation, the DGTR extended the scope of the PUC.
 - b. The domestic industry has only provided evidence of dumping, injury, and causal link for rock breakers and chisels in fully assembled form. Article 5.2 of the WTO Anti-Dumping Agreement states that an anti-dumping investigation may only be initiated if *prima facie* evidence supports dumping and injury. There is no *prima facie* evidence regarding dumping and injury to the domestic industry caused by the imports of the seven components.
 - c. There is no information on record to even indicate that the present domestic industry constitutes a major proportion of the domestic production of these seven components.
 - d. The Manual of Standard Operating Practices for Trade Remedy Investigations published by the DGTR states that the PUC cannot be expanded during the investigation, and the PCN methodology must be finalized within 60 days of the initiation of the investigation.
 - e. If there is evidence that the seven components imported from Korea are dumped and injurious, such information has not been provided to the interested parties, which is a gross violation of Articles 6.1.3 and 6.4 of the WTO Anti-Dumping Agreement.
 - f. The PCN for the chisel is based on diameters only. However, a chisel of the same diameter may have different lengths, resulting in price differences. The price differences could be attributed to weight differences.
 - g. Article 2.4 of the WTO Anti-Dumping Agreement mandates that due allowances are made in each case for product differences that affect price comparability. It is highlighted that if PCN parameters are being defined, the DGTR is obligated to include parameters that are necessary for an apple-to-apple comparison.
9. *DAEMO Engineering Co. Ltd., Ningbo Yinzhou Get Machinery Ltd., Soosan Heavy Industries Co., Ltd., and FEEL Industrial Engineering Co. Ltd.* made the following submissions about the scope of the product under consideration:
- a. The scope of the product under consideration cannot be enhanced after the initiation of the investigation. In the initiation notification, the scope of the PUC was split into two parts: alloy steel chisel/tools and hydraulic rock breaker in fully assembled condition.

- b. The description in the second paragraph of the definition of the PUC is only the non-exhaustive list of names under which the subject goods are imported into India.
 - c. Even in its application, the domestic industry has only explained two types of PUC – i.e., hydraulic rock breaker and chisel (also known as tools). There is no mention of the seven types of parts and components as being a part of the petition.
 - d. The Authority has only introduced the seven types of parts and components vide its notification dated 16th June 2023. The domestic industry itself has filed an application for PUC, which is limited to the above definition and does not include parts and components.
 - e. All information regarding the economic parameters in the petition pertains only to alloy steel chisel/tool and hydraulic rock breaker in fully assembled condition and does not include any assemblies/sub-assemblies.
 - f. The Authority has defined the PUC in its initiation notification based on the information contained in the petition, however, subsequently, the Authority expanded the scope of the PUC vide notification dated 16th June 2023.
 - g. The act of the Authority in expanding the scope of the PUC after the initiation of the investigation violates para 3.5 and 3.13.4 of the Manual of Operating Practices for Trade Remedy investigations, which states that the scope of the PUC cannot be changed during the course of the investigation. Any changes in the scope of the PUC must be finalized within 3 months from the date of the initiation notification.
 - h. In the case of *Industrial Laser Machines*, the scope of the PUC as defined in the initiation notification included SKD and CKD form – meaning that parts and components were expressly intended to be included within the scope of the PUC during the initiation itself.
 - i. If the Authority continues to include the assemblies and sub-assemblies in the scope of the PUC, then separate injury analysis must be done.
10. *Hyundai Everdigm Corp.*, and *D and A Heavy Industries Co. Ltd.* have made the following submissions about the scope of the product under consideration:
- a. The Authority was not justified in expanding the scope of the PUC.
 - b. Paragraph 3 of the initiation notification defines the PUC as “*alloy steel chisel/tool and hydraulic rock breaker in fully assembled condition*”.
 - c. The exhaustive list of descriptions given in the following sentence is intended to list out the descriptions under which the PUC is usually imported into India and is not intended to clarify/expand the scope of the PUC.

- d. The non-exhaustive list only mentions the names that might be mentioned for the purpose of filing a bill of entry – however, none of the descriptions clarified or expanded the scope of the PUC.
- e. The unwarranted broadening of the scope of the PUC has led to a disproportionate increase in the product scope, which defeats the requirement of fair and objective comparison.
- f. The expansion of product scope goes beyond the original intent of the product definition.
- g. The original definition categorically focused on fully assembled alloy steel chisel and hydraulic rock breakers. The current broadened scope of the PUC includes various ‘components’ or upstream inputs of hydraulic rock breakers.
- h. The newly included components are separate and distinct products and, therefore, cannot be considered as ‘like article’ to the fully assembled PUC. This should have been explicitly recognized in the initiation notification itself.
- i. The current expansion of the product scope introduces a non-exhaustive list of components without clearly establishing their relevance to the initially defined PUC.
- j. For example, if there is an anti-dumping investigation on cars, the PUC would include SUVs, MUVs, and cars with four-wheel drive; but the PUC would not include seat covers, tires, steering wheels, etc.
- k. Expansion of the product scope post the initiation stage is not legally tenable. PUC, once defined in the initiation stage, cannot be expanded frivolously.
- l. The petitioner has not provided enough evidence that circumvention in terms of Rule 25(2)(a) of the AD rules is taking place.
- m. Anti-dumping investigations are published in the Gazette and notified to the governments of the subject countries, the exporters, the importers, etc. The purpose of the notification is to give due notice to all parties to help them decide upon their participation.
- n. The Authority may narrow down the scope of the PUC, but not broaden it.
- o. Paragraph 3.13.4 of the Manual of Operating Practices for Trade Remedy Investigation itself clarifies that the scope of the PUC is frozen at the stage of initiation itself.
- p. Even if it is assumed that the Authority has the power to expand the product scope beyond the initiation stage, the initiation notification mentions the PUC as being in “fully assembled condition”.
- q. Exporters/importers would have had no reason to register their interest and participate in the subject investigation before the Hon’ble Authority at this stage.

- r. After 9 months of the investigation, the Authority abruptly expanded the scope of the PUC. Thus, many interested parties who might have been affected by the inclusion of the products had no notice of this sudden increase in the scope of the PUC.
 - s. The PCN notification was not a gazette document, but rather an office memorandum, unlike the initiation notification.
 - t. The PCN Notification is also not communicated through diplomatic channels as is the case with a Gazette Initiation Notification.
 - u. Assemblies and sub-assemblies were not included in the scope of the PUC at the stage of the initiation.
 - v. The word “assembly”, as per the Oxford Dictionary, means the process of putting together the parts of something such as a vehicle or piece of furniture. “Sub-assembly” means an assembled unit designed to be incorporated with other units in a finished product.
 - w. Assemblies and sub-assemblies are terms used for the process of taking multiple products together in order to incorporate them into a finished product, and thus, individual components, assemblies, or sub-assemblies are not fully assembled hydraulic rock breakers.
 - x. All past investigations cited by the petitioner were investigations where CKD and SKD were included in the scope of the PUC at the initiation stage itself. None of the past precedents are cases where the scope of the PUC has been expanded after the initiation of the investigation.
 - y. The mere apprehension of the domestic industry regarding possible circumvention, without any conclusive basis, cannot be the basis for overlooking the legal obligation – which is that the PUC cannot be altered after the initiation of the investigation.
 - z. The petitioner has not filed an application for anti-circumvention investigation and therefore, cannot pre-empt a mischief and request for issuance of prior remedy.
 - aa. After circumvention takes place, the domestic industry is at liberty to approach the authority with a fresh application.
 - bb. The Authority cannot issue an *ex-parte* relief by including parts and components within the scope of the PUC.
11. *Hansung Special Machinery Co. Ltd., Korea RP*, made the following submissions about the scope of the product under consideration:⁹
- a. The scope of the PUC includes rock breakers and chisels – however, the unit cost of the

⁹ Post oral hearing written submissions filed by Hansung Special Machinery Co. Ltd., dated August 2, 2024.

- chisels is very low compared to the entirety of the rock breakers.
- b. The price range for rock breakers is USD 10,000 ~ USD 20,000, whereas, chisels is only in the range of USD 30 ~ USD 400.
 - c. Hansung is only a producer of chisels and does not specifically object to the scope of the PUC, except to the extent of determining the competence of the petitioner to qualify as the domestic industry in the investigation in terms of Rule 2(b) to the AD Rules, 1995.
 - d. Hansung produces chisels that vary greatly in length despite having the same outer diameter. This variance of length results in a significant distortion of the per unit price of a product, even if all the other factors, such as outer diameter and the customer, remain the same.
12. *Fine Equipments and FYN* made the following submissions about the scope of the product under consideration:
- a. The scope of the PUC, as clarified by the letter dated 16th June 2023, is in violation of the provisions of trade remedy investigations and the manual issued by the DGTR.
 - b. Paragraphs 3.5 and 3.13.4 of the Manual of Standard Operating Practice state that the PUC cannot be enhanced during the course of the investigation.
 - c. The expansion of the PUC is in violation of the principles of natural justice since producers and manufacturers of parts.
 - d. The application filed by DOZCO does not contain information regarding the assemblies and sub-assemblies of the rock breakers.
13. *Yantai Eddie Precision Machinery Co. Ltd.*, made the following submissions about the scope of the product under consideration:¹⁰
- a. The PUC defined in the initiation notification was according to the scope of the PUC defined by DOZCO in its application.
 - b. The questionnaire issued by the Authority for filing an application requires the applicant to provide a comprehensive description of the alleged dumped goods.
 - c. In DOZCO's application, only two common usage names of the PUC have been mentioned – i.e., hydraulic rock breaker and chisel.
 - d. DOZCO's application first defines how a hydraulic rock breaker functions and then goes on to explain the functioning of a chisel. There is no separate reference to assemblies / sub-assemblies of rock breakers that have been identified.

¹⁰ Post oral hearing written submissions filed by Yantai Eddie Precision Machinery Co. Ltd., dated August 2, 2024.

- e. The PCN notification is an incorrect interpretation of the initiation notification and an erroneous application of the doctrine of harmonious construction.
- f. The doctrine of harmonious construction applies in cases where there is a conflict between two or more statutes or parts of the same statute, and the same are to be interpreted harmoniously so that one part does not defeat the purposes of the other part.
- g. The doctrine is applied only where there is a clear conflict between two provisions, as held by the Hon'ble Supreme Court in the case of *Saint Stephen's College v. the University of Delhi, (1992) 1 SCC 558*.
- h. In all circumstances, provisions must be read through the golden rule of interpretation, i.e., the ordinary, natural, and grammatical meaning. The principle of harmonious construction should not be used as a tool to first create disharmony or conflict between two provisions, only to resolve it thereafter.
- i. The import descriptions mentioned, along with the definition of the PUC, must be read only in light of the definition of the PUC provided in the first sentence of the PUC definition.
- j. None of the import descriptions mentioned in the initiation notification captures the seven assemblies/sub-assemblies identified by the Authority in its PUC/PCN letter.
- k. A description of a product cannot be used to include its parts within the scope of the PUC.
- l. The Authority has included 'pistons' within the scope of the PUC. However, by any stretch of the imagination, it cannot be interpreted that a "hydraulic rock breaker in fully assembled condition" can be described as a mere 'piston'.
- m. Even the applicant has not stated anywhere in the application that a hydraulic rock breaker in fully assembled condition is also imported with descriptions of assemblies / sub-assemblies.
- n. There is no conflict between the two parts of the initiation notification, which could warrant harmonious construction.
- o. The Authority cannot interpret the phrase "hydraulic rock breaker assembly kit" to expand the product scope and include the seven assemblies / sub-assemblies of the hydraulic rock breaker. The phrase should only be understood as referring to a situation where all the assemblies/sub-assemblies of a hydraulic rock breaker are imported together in one consignment as a kit and presented to Customs as a kit at the time of clearance.
- p. Identifying the scope of the PUC is the key starting point of any anti-dumping investigation. All other aspects of the investigation, including the domestic industry's

- standing, dumping, injury and causality, are hinged on properly defining the scope of the PUC.
- q. If the scope of the PUC includes products not manufactured by the domestic industry, it will lead to an incorrect determination of import volumes, which cannot cause any injury to the domestic industry.
 - r. The term ‘product’ / ‘product under consideration’ or ‘article’ / ‘article under investigation’ have not been defined in the Act and the Rules. Rule 2(d) defines the term “like article” as “*an article which is identical or alike in all respects to the article under investigation...*”. However, this definition does not define what is meant by the phrase “article under investigation”. For identifying what is an “article under investigation”, the only source is the import statistics/data.
 - s. The applicant has provided the import segregation methodology for three categories – rock breakers, chisel and parts of rock breaker. From this universe, the applicant chose to only select chisel and hydraulic rock breaker in fully assembled condition under the product scope.
 - t. The parts of PUC, i.e., those identified as ‘RB Parts’ by the applicant have not been included in the scope of the PUC.
 - u. In the application filed by DOZCO, there is no reference to assemblies/sub-assemblies of rock breakers.
 - v. The applicant has made no allegation of dumping or material injury with respect to imports of assemblies/sub-assemblies. Without any *prima facie* evidence of dumping, the Authority could not have expanded the scope of the PUC.
 - w. Even in the updated application, no claim of injury with respect to imports of assemblies/sub-assemblies has been made.
 - x. The scope of the PUC should be limited to products manufactured and commercially sold by the applicant during the POI.
 - y. Paragraph 3.10 of the Manual of Operating Practices of the DGTR states that the PUC can include items which are manufactured and commercially sold by the applicant.
 - z. In the case of *Oxo Alcohols Industries’ Association v. Designated Authority, 2001 (130) ELT 58*, the Ld. CESTAT held that if the products are not manufactured by the domestic industry, the import of the same could not cause injury to the domestic industry, and therefore, such products should be excluded from the scope of the PUC.
 - aa. In *Technova Imaging Systems Pvt. Ltd. v. Union of India*, the Ld. CESTAT held that in a material injury case, the anti-dumping law requires consideration of the period of investigation data, and it is in this period that the domestic industry should manufacture

- and commercially supply the PUC.
- bb. Inclusion of assemblies/sub-assemblies is violative of Rule 6(4) of the AD Rules, which mandates that a copy of the initiation notification must be forwarded to the governments of all the subject countries.
 - cc. Rule 6(4) stems from Article 12.1 of the Anti-Dumping Agreement, which states that every investigating authority must notify all interested parties about the initiation of an investigation through a public notice. It further states that such notice must contain the details of the product involved in the investigation.
 - dd. The Authority has only forwarded the public notice, i.e., the initiation notification, to the governments of the subject countries. The exporters who had exported assemblies/sub-assemblies of rock breakers have not been informed that these items are included in the product scope. Therefore, they had no occasion to participate in the investigation.
 - ee. In all previous investigations where the product scope included both inputs and outputs in a single investigation, such product inclusions were expressly defined in the application as well as the initiation notification.
 - ff. In the anti-dumping investigation concerning solar cells from Malaysia, China PR, Chinese Taipei and USA, the scope of the PUC was clearly defined to include both inputs and outputs.
 - gg. In the anti-dumping investigation concerning stainless steel seamless tubes and pipes from China, the Authority covered both hot-rolled and cold-rolled pipes within the product scope.
 - hh. In the anti-dumping investigation concerning *Industrial Laser Machines* from China PR, the Authority included fully assembled, CKD and SKD forms of industrial laser machines within the product scope.
 - ii. The petitioner has, only in its written submissions, contended that the seven assemblies/sub-assemblies are covered in the scope of the PUC. This assertion is neither present in the application filed by DOZCO nor in its PUC/PCN submissions.
 - jj. The non-exhaustive list of import descriptions of the PUC cannot be used to expand the scope of the PUC in the present case to include assemblies/sub-assemblies.
 - kk. The seven assemblies/sub-assemblies cannot be regarded as mere descriptions of fully assembled hydraulic rock breakers and, therefore, cannot be included within the scope of the PUC.
 - ll. The apprehension of circumvention is not mentioned in the application filed by the applicant. If the applicant was of the opinion that non-inclusion of the assemblies/sub-

assemblies may lead to circumvention, then such apprehension should have been laid out in the application itself.

- mm. In the case of *Huawei Technologies*, the application filed by the applicant specifically included parts of the product within the scope of the proposed PUC. Based on the application filed, the Authority defined the scope of the PUC as including parts and components.
- nn. In the present investigation, neither the application nor the initiation notification makes reference to the inclusion of the assemblies/sub-assemblies in the scope of the PUC.
- oo. The reliance placed by the domestic industry on the past practice of the Authority is misguided since, in all the previous cases cited, the Authority had included parts, components, etc., within the scope of the PUC at the initiation stage itself.
- pp. The Authority cannot interpret the phrase '*Hydraulic Rock breaker assembly kit*' to expand the scope of the PUC to include the seven assemblies/sub-assemblies of the hydraulic rock breakers.

C.3 Examination by the Authority

- 14. The product under consideration in the Initiation Notification was defined as "*alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition*". The PUC consists of two different categories: (a) hydraulic rock breakers and (b) chisels.
- 15. A hydraulic rock breaker is an engineered product made of alloy steel. It is an attachment tool mounted on an excavator/mini-excavators/backhoe loader/skid steer loader etc. It is powered by hydraulic system from the excavator. The cylinder is the heart of the breaker containing a hydraulic circuit for piston reciprocation. The hydraulic oil pressure is applied on the piston, which hits the tool/chisel, and then the kinetic energy of the piston is converted into hammering energy. This impact creates a stress wave that goes through the chisel/tool to the rock. The travelling reflection of stress breaks the rock.
- 16. A chisel (also known as a tool) is attached at the bottom of the body of a hydraulic rock breaker. The chisel comes in contact with the surface to be broken on impact. Chisels are also sold separately apart from rock breakers. Usually, a chisel gets worn out after certain hours of usage and is replaced with another chisel. Depending upon the type of usage and the kind of impact force required, the tip of the chisel may be of different shapes such as blunt, wedge, moil, conical etc. The other interested parties have not objected to the inclusion of chisels within the scope of the PUC but have raised certain issues regarding the PCNs adopted by the Authority, as discussed below.

17. With respect to hydraulic rock breakers, after the initiation of the investigation, the Authority invited comments from all interested parties regarding the scope of the PUC and the Product Control Numbers (PCNs).
18. Certain interested parties requested the Authority to clarify whether assemblies, sub-assemblies and components of hydraulic rock breakers are included within the scope of the PUC. The Authority conducted an oral hearing specifically to discuss the scope of the PUC and the PCNs which may be adopted and permitted parties to file their written submissions. Vide Notification dated 16th June 2023, the Authority clarified that seven assemblies and sub-assemblies are included within the scope of the PUC.
19. The Authority has identified the following issues for consideration regarding the scope of the PUC:
 - a. Whether assemblies / sub-assemblies of fully assembled hydraulic rock breakers are included within the scope of the PUC?
 - b. Whether the PUC must only include those products which the domestic industry is manufacturing?
 - c. Whether the inclusion of assemblies / sub-assemblies of fully assembled hydraulic rock breakers permissible under the law?

C.3.1 Whether assemblies / sub-assemblies of fully assembled hydraulic rock breakers included within the scope of the PUC?

20. After the initiation of the investigation, the Authority invited comments from various interested parties regarding the scope of the PUC and permitted parties to propose the PCNs that should be adopted by the Authority. Multiple interested parties requested the Authority to clarify that parts and components of hydraulic rock breakers and unassembled form of the PUC are not included within the scope of the PUC. DOZCO objected to these claims stating that assemblies and sub-assemblies are included within the scope of the PUC, and exclusion of parts and components would give rise to circumvention of the duties.
21. DOZCO raised serious concerns that a significant quantity of imports is in the form of assemblies/sub-assemblies that can easily be assembled to form hydraulic rock breakers. DOZCO also claimed that assembling the components, assemblies and sub-assemblies into hydraulic rock breakers is a simple process which does not involve significant commercial expenditure or technical expertise. DOZCO submitted that since hydraulic rock breakers are capital goods, they can be imported in unassembled or sub-assembled form to evade the anti-dumping duties (if imposed).

22. DOZCO relies on the Ld. CESTAT's decisions in *Huawei Technologies*¹¹ and *Marino Panel Products*¹² to contend that the Authority may include parts and components within the scope of the PUC – even if the domestic industry does not manufacture them – to avoid circumvention of the duties. DOZCO also points out that in several previous investigations, such as *Industrial Laser Machines*,¹³ *Glass Fibres*,¹⁴ *SDH Equipments*,¹⁵ the Authority had defined the scope of the PUC broadly to ensure that the purpose of the duty was effective. DOZCO submitted that it is the standard practice of investigating authorities all over the world to include parts and components within the scope of the PUC. DOZCO requested the Authority to take note of the anti-dumping investigation concerning *Axle of Trailers*,¹⁶ where after the imposition of the anti-dumping duties, the Commissioner of Customs noticed an abnormal increase in the imports of parts, which warranted an anti-circumvention investigation. DOZCO submitted that the import data suggests that there is a constant trade flow of various assemblies/sub-assemblies of rock-breakers. DOZCO also argued that the WTO Panel in *EC – Salmon (Norway)*¹⁷ and *EU – Steel Safeguards*¹⁸ has observed that two separate categories of products can be covered under a single investigation.
23. It is undisputed that the product under consideration defined for any given investigation can comprise of multiple different products, which need not be like products to one another – in other words, the various categories of products within the PUC need not be internally homogenous. The WTO Panel in *EC – Salmon (Norway)*¹⁹ observed that the Authority is under no obligation to define the PUC in such a manner that all categories of products within the PUC are “like” one another. It has also been the practice of the Authority in several previous investigations to define the PUC to include a broad category of products –

¹¹ *Huawei Technologies and Ors. v. Designated Authority and Ors.*, Appeal No. AD/13/2012 (CESTAT).

¹² *Marino Panel Products v. Designated Authority*, Appeal No. AD/7/2010-CU[DB].

¹³ Final Finding [F. No. 06/07/2022-DGTR](#), *Anti-Dumping Investigation Concerning Imports of Industrial Laser Machines used for cutting, marking, or welding originating in or exported from China PR.*

¹⁴ Final Findings [F. No. 14/28/2009-DGAD](#), *Anti-dumping Investigation concerning import of Glass Fibre and articles thereof originating in or exported from China PR.*

¹⁵ Final Findings [F. No. 14/2/2009-DGAD](#), *Anti-Dumping Duty investigation in respect of import of Synchronous Digital Hierarchy Transmission Equipment (SDH Equipment), originating in or exported from the People's Republic of China PR and Israel.*

¹⁶ Final Finding [F. No. 4/11/2010-DGTR](#), CASE NO. (AC) 7/2020, *Anti-Circumvention investigation concerning alleged circumvention of Anti-dumping duty imposed on the import of 'Axle for Trailer' originating in or export from China PR.*

¹⁷ Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, [WT/DS337/R](#), adopted 15 January 2008.

¹⁸ Panel Report, *European Union – Safeguard Measures on Certain Steel Products*, [WT/DS595/R](#) and Add.1, adopted 31 May 2022.

¹⁹ Panel Report, *EC – Salmon (Norway)* [WT/DS337/R](#).

which may not be like one another.²⁰ The Ld. CESTAT, has also held that it is permissible to include parts and components of the finished product within the scope of the PUC.²¹

24. The other interested parties do not dispute the Authority's powers to define the PUC broadly to include a wide range of product categories, including parts and components. Rather, their grievance is that the PUC defined in the initiation notification has allegedly been expanded by the PCN Notification dated 16th June, 2023. The other interested parties contend that since the initiation notification defines the PUC as "hydraulic rock breakers in fully assembled condition", the investigation must be limited to this definition only, and no expansion of the PUC is permissible. The other interested parties point out that all past investigations where parts and components were a part of the PUC were cases where the initiation notification itself defined the PUC to comprise of parts and components.
25. The Republic of Korea contended that the investigation was not initiated on the basis of *prima facie* evidence of dumping and injury in relation to the seven assemblies and sub-assemblies – which is in contravention of Article 5.2 of the Anti-Dumping Agreement. DAEMO, Ningbo, Soosan, FEEL, Everdigm, and D&A rely on the Manual of Operating Practices for Trade Remedy Investigations to contend that the product under consideration, once defined at the stage of initiation, cannot be altered subsequently. Other interested parties made similar submissions.
26. In response to the claims of the other interested parties regarding the alleged expansion of the product scope, DOZCO submitted that the scope of the PUC was not modified through the PCN Notification dated 16th June 2023. DOZCO submits that paragraph 4 of the initiation notification contained a non-exhaustive list of product descriptions under which the PUC is also imported. The non-exhaustive list contained items such as "hydraulic spare body" and "hydraulic assembly kits", which are not fully assembled hydraulic rock breakers. DOZCO submits that the use of these terms in the non-exhaustive list of product definitions indicates that parts of fully assembled hydraulic rock breakers were intended to be included within the scope of the PUC.
27. Everdigm and D&A contended that the product description mentioned in the initiation notification cannot be used to expand the scope of the PUC. The non-exhaustive list of product descriptions only mentions the names that may be mentioned while filing the bill of entry. Eddie argues that terms such as "hydraulic rock breaker assembly kit" mentioned in the non-exhaustive list cannot be understood to include the seven assemblies and sub-assemblies of hydraulic rock breakers. Eddie further argues that the phrase should only be

²⁰ See note 22.

²¹ See notes 11 and 12.

understood as referring to a situation where all assemblies and sub-assemblies of hydraulic rock breakers are imported together in one consignment as a kit.

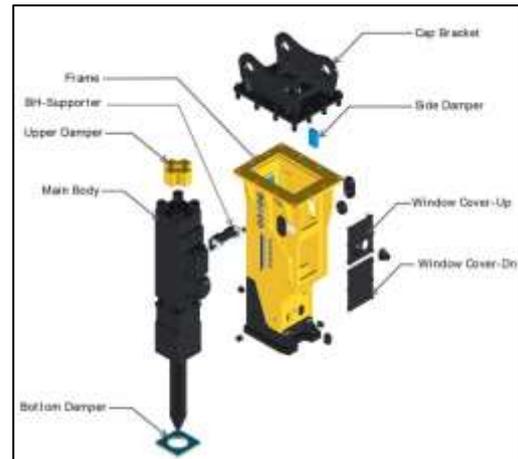
28. In the present investigation, the PUC comprises, *inter alia* of hydraulic rock breaker in fully assembled condition. The Authority notes that the words “in fully assembled condition”, as mentioned in paragraph 3 of the initiation notification, do not pertain to the essential characteristics or nature of the product, but rather the form in which the product is sold or imported. It is further clarified that the descriptions mentioned in the initiation notification indicated the different forms in which hydraulic rock breakers are imported. However, the initiation notification gave the impression that all parts and components of hydraulic rock breakers were covered within the scope of the investigation. Thereafter, upon perusing the comments of all interested parties including the domestic industry, the scope was restricted to seven assemblies and sub-assemblies which were subsequently mentioned in the Scope Notification.
29. Products such as assembly kits, rod pin, through bolts etc. were excluded out of the scope of the PUC. Due to the inclusive language of the non-exhaustive list of item descriptions mentioned in paragraph 4 of the initiation notification, several smaller parts were covered within the scope of the PUC, even though they are minor parts of the hydraulic rock breakers.
30. It is further noted that rock breakers are capital goods,²² comprising of numerous different parts, components, assemblies and sub-assemblies. The following picture shows the cross – section and the internal structure of a hydraulic rock breaker:

²² Under the [FTP 2015-20](#), “capital goods” are defined as follows:

“Capital Goods” means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological upgradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.



3 D Model of Hydraulic Rock Breaker



Cross-section of a Hydraulic Rock breaker



Different types of chisels used with Hydraulic Rock Breakers

31. The above pictures show the major components of a hydraulic rock breaker and different types of chisels used in hydraulic rock breakers. These components are further made from several smaller parts. All these smaller parts are individually manufactured and assembled to form the abovementioned major components seen in the picture. The major components are further assembled to form hydraulic rock breakers in fully assembled condition.
32. To address both the domestic industry's concerns and the counterarguments, the investigating team conducted an on-site verification at the domestic industry's plant. Observations revealed a straightforward assembly process lacking technical complexity or significant costs. Assemblies/sub-assemblies were readily converted into fully-assembled hydraulic rock breakers using basic manual labor and a heavy-weight lifting machine. This demonstrated a clear and imminent risk of circumvention. Hence, the threat of

circumvention by the domestic industry is not merely an unsubstantiated assertion, but a very imminent probability. Therefore, it was not deemed appropriate to exclude the assemblies/sub-assemblies from the scope of the PUC as requested by the other interested parties.

33. It is not necessary that capital goods are always imported in a fully assembled condition; it may be the case that for ease of transportation or other logistical purposes, capital goods are imported taking place in the form of unassembled parts, which are ready to be assembled.
34. After a detailed analysis of the voluminous amount of import data received from DG Systems, it was noticed that a significant quantity of imports of the PUC (i.e. hydraulic rock breaker) are in the form of parts which can easily be assembled to form the PUC. In other words, the products are being imported in unassembled forms/conditions. It was observed that due to the nature and size of hydraulic rock breakers, and since they are capital goods, it was common practice to import hydraulic rock breakers in unassembled form/condition. However, this does not change the essential nature and characteristics of the finished product. The only difference between a fully assembled hydraulic rock breaker and unassembled forms of hydraulic rock breakers is the form in which they are imported. In all other parameters, they are one and the same. The words “assemblies/sub-assemblies” and “fully assembled condition” only pertain to different forms in which rock breakers are imported, as was pointed out through the several descriptions mentioned in the initiation notification. There are no differences between hydraulic rock breakers in fully assembled condition and hydraulic rock breakers imported in form of assemblies/sub-assemblies.
35. In the case of *Intercontinental Oils and Fats Pte. Ltd. v. Union of India and Ors.*,²³ the Ld. CESTAT permitted the inclusion of unfinished forms of the product within the scope of the PUC, even though the domestic industry did not have the capacity to manufacture the unfinished forms. In that case, the domestic industry only manufactured blended forms of C12-C14 alcohol and not pure cuts of C12 and C14 alcohol. The Ld. CESTAT noted that “pure grade C12 and C14 and its blend C12-C14 originate out of the same raw material by the same manufacturing process. It has also been contended by the domestic industry that C12 and C14 can be blended together by a simple process”. The Ld. CESTAT noted that if the pure cuts of C12 and C14 are excluded, it would defeat the very purpose of the levy and, therefore, include the pure cuts within the scope of the PUC.
36. Similarly, in the present investigation, these sub-assemblies and assemblies can be assembled to form a fully assembled hydraulic rock breaker and interchanged and substituted with the product manufactured by the domestic industry. Thus, sub-assemblies and assemblies differ

²³ *Intercontinental Oils and Fats Pte. Ltd. v. Union of India and Ors.*, Anti-Dumping Appeal No. 50228 of 2019.

from fully assembled rock breaker only in the form in which they are imported.

37. It was also argued that if all these small parts were included within the scope of the PUC, it would lead to a situation where the product scope is so large that the investigation would encompass those imported products which are not the cause of injury to the domestic industry.
38. Interested parties have stated that the seven assemblies and sub-assemblies are not “like articles” to fully assembled hydraulic rock breakers. The Authority agrees to the extent these articles are not individually alike to a fully assembled rock breaker. However, it is noted that these assemblies can be exported either together in a single transaction/consignment or multiple consignments, which may be separated in time, but could be imported to form fully assembled rock breakers.
39. In this regard, the Authority refers to the following observations in the anti-dumping investigation on *Industrial Laser Machines* from China PR may be noted:

“18. As regards meaning of SKD and CKD, the Authority considers that the same is a well understood term. SKD shall mean a laser machine which is not fully assembled, but is transacted as a laser machine with all essential components not fitted and the machine is not ready to use. CKD for the purpose shall mean an article in its incomplete or unfinished form and has the essential character of the complete article. Hence, a standalone component shall not amount to import of the PUC in its SKD/ CKD form. However, if all the components are transacted in such a manner that it merely requires assembly operation in India, such transaction would amount to transaction in CKD condition and shall be within the ambit of the PUC, even if such transaction does not take place in single consignment.”

40. Thus, when the seven assemblies/sub-assemblies, when transacted in such a manner that it merely requires assembly operation in India, such transaction would amount to a transaction of unassembled form/condition of hydraulic rock breaker, even if such transaction does not take place in a single consignment/single transaction or takes place in multiple transactions.
41. The Authority also notes that Everdigm and D&A have raised concerns that the inclusion of assemblies and sub-assemblies would distort the injury analysis since high-priced components which are imported in small volumes would be compared to low-priced components which are imported in high volumes. It is clarified that the dumping margin and injury margin have been determined on a weighted average basis (price per MT and not pieces per MT) and therefore, the impact of such components would not distort the

margins. The comparison is not happening on a per piece basis. The prices of individual assemblies and sub-assemblies have not been compared to the prices of individual hydraulic rock breakers. Price variations among units of different assemblies and the fully assembled hydraulic rock breakers may not affect price comparability since the comparison is made on a weighted average basis. The Authority has conducted its dumping and injury analysis based on this methodology.

42. Based on the above, the Authority holds that the PCN notification dated 16th June 2023 has not expanded the scope of the PUC. Importantly, the PCN notification limits the PUC's scope as compared to its broader definition in the initiation notification. Thus, the scope of the PUC is as follows:

“Alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition along with the following sub-assemblies and assemblies of rock breakers:

- a. Piston for Hydraulic cylinder or rock breaker
- b. Front head
- c. Back head
- d. Cylinder
- e. Frame
- f. Cylinder body or Hydraulic Unit
- g. Bracket

All other parts and components of rock breakers are not covered within the scope of the PUC.”

C.3.2 Whether the PUC must only include those products which the domestic industry is selling?

43. Eddie submitted that in the case of *Oxo Alcohols* and *Technova*, the Ld. CESTAT has held that products that are not manufactured by the domestic industry, the imports of which cannot cause injury to the domestic industry, must be excluded from the scope of the PUC.
44. DOZCO has relied on the decisions of the Ld. CESTAT in *Huawei Technologies* and *Marino Panel Products* to argue that the Ld. CESTAT permitted the inclusion of parts and components which have not been manufactured by the domestic industry within the scope of the PUC if it defeats the purpose of the levy and may lead to circumvention of the duties. D&A and Everdigm submitted that any claims of circumvention cannot be based on mere allegations and conjecture but must be proved through evidence in terms of Rule 25(2)(a) of the AD Rules. Eddie submitted that the apprehension of circumvention is not mentioned in the application but is an afterthought.

45. The Authority notes that it is undisputed that the domestic industry only sells fully assembled hydraulic rock breakers and not assemblies, sub-assemblies, or components separately. However, the domestic industry manufactures assemblies, sub-assemblies, and components and uses the same to produce fully assembled hydraulic rock breakers. In the cases of *Intercontinental*,²⁴ *Huawei Technologies*²⁵ and *Marino Panel Products*,²⁶ the Ld. CESTAT held that it is permissible to include parts and components of products within the scope of the PUC in order to ensure that the purpose of the levy is effective, even if the domestic industry does not produce or sell the goods. In the case of *Huawei Technologies*, the Ld. CESTAT held that even if parts are produced for captive consumption only, their inclusion in the PUC is justified in order to prevent or avoid circumvention. The Ld. CESTAT observed as follows:

“29. In our view it is permissible for the Authority to include within the purview of the PUC, parts and components, which if not included, would make the levy ineffective. The coverage of the product for levy of duty should be such that the purpose and intent of the levy is achieved. Anti-dumping duty is levied to safeguard the domestic producers from ill effects of dumping. If the parts and components meant for SDH application are excluded, the importers could simply bring the items in different consignments, in unassembled form, and assemble the same in India and defeat the levy. Indeed, including parts and components is consistent with the global practice of defining the PUC in a manner so as to prevent avoidance or circumvention of the levy by the exporters as is evident from the USITC decisions”

46. In the instant case, DOZCO manufactures the assemblies and sub-assemblies for captive consumption to produce fully assembled hydraulic rock breakers. As already discussed above, during the on-site verification of the domestic industry, the investigating team observed that the assembly process for the assemblies and sub-assemblies into fully assembled hydraulic rock breakers does not involve any technical complexity or substantial financial costs. From the import data, it is also observed that a significant volume of assemblies and sub-assemblies of hydraulic rock breakers are being imported.
47. D&A and Everdigm submitted that circumvention must be proved in terms of Rule 25(2) of the AD Rules. While it is true that Rule 25(2) of the AD Rules stipulates a set of criteria for circumvention, the Authority notes that Rule 25(2) provides a remedy only after circumvention has taken place but does not deal with a situation of preventing

²⁴ *Intercontinental Oils and Fats Pte. Ltd. v. Union of India and Ors.*, Anti-Dumping Appeal No. 50228 OF 2019.

²⁵ *Huawei Technologies and Ors. v. Designated Authority and Ors.*, Appeal No. AD/13/2012 (CESTAT).

²⁶ *Marino Panel Products v. Designated Authority*, Appeal No. AD/7/2010-CU[DB].

circumvention. The Ld. CESTAT, in *Intercontinental*²⁷ and *Huawei Technologies*²⁸ held that the Authority has the power to take preventive action against circumvention by defining the PUC so as to include parts and components. Therefore, the arguments of D&A and Everdigm regarding Rule 25(2) of the AD Rules are unfounded.

48. The facts of the present case fit squarely in the judgement of the Ld. CESTAT in *Intercontinental* and *Huawei Technologies*. Therefore, the exclusion of assemblies and sub-assemblies of hydraulic rock breakers from the scope of the PUC is not warranted. The only argument that remains is that in *Intercontinental* and *Huawei Technologies*, the Authority had specifically mentioned parts and components in the definition of the PUC. However, this argument is not justifiable – the Authority has already explained that there has been no expansion of the PUC in the present investigation.
49. The Authority further notes that the reliance placed by Eddie on the decisions in *Technova* and *Oxo Alcohols* is misplaced. *Technova* was a case where multiple different varieties of products (lithograde aluminium, colour coated aluminum, etc.) were included within the scope of the PUC. The question of whether sub-assemblies and assemblies of a product could be included in the scope of the PUC was not considered by the Ld. CESTAT in the case of *Technova*. Further, fully assembled rock breakers are already being sold by the domestic industry, and therefore, there is no reason why the domestic industry cannot supply the assemblies and sub-assemblies of the rock breakers and, chisels manufactured by it in the market, if requested by consumers. In the case of *Oxo Alcohols*, the Ld. CESTAT held that there was no evidence to demonstrate that normal hexanol was ‘like articles’ to the articles manufactured by the domestic industry. The present case is distinguishable from the factual aspects of the cases cited by Eddie.

C.3.3 Whether the inclusion of assemblies / sub-assemblies of fully assembled hydraulic rock breakers permissible under the law?

50. DAEMO, Ningbo, Soosan, FEEL and Eddie submitted that the application filed by the domestic industry specifies only hydraulic rock breakers and chisels and does not mention the seven types of parts and components. It was further submitted that the information regarding the economic parameters in the application only pertains to chisels and hydraulic rock breakers in fully assembled condition and not the assemblies and sub-assemblies. Further, parties have submitted that the PUC defined at the stage of initiation cannot be altered as per paragraph 3.13.4 of the Manual of Operating Practices for Trade Remedy

²⁷ *Intercontinental Oils and Fats Pte. Ltd. v. Union of India and Ors.*, Anti Dumping Appeal No. 50228 OF 2019.

²⁸ *Huawei Technologies and Ors. v. Designated Authority and Ors.*, Appeal No. AD/13/2012 (CESTAT).

Investigations.

51. The Authority notes that the Manual of Operating Practices is not binding on the Authority.²⁹ Notwithstanding this, the Authority notes that it has not expanded the scope of the PUC beyond the scope of what has been provided in the application and the initiation notification. As explained above, sub-assemblies/assemblies of hydraulic rock breakers are merely forms in which the PUC may be imported into India.
52. D&A, Everdigm and Eddie have contended that the initiation notification was published in the Gazette and notified to the governments of the subject countries, the exporters, the importers, etc. It was further submitted that the purpose of the gazette notification was to give due notice to all parties to help them decide upon their participation. It was submitted that the PCN notification was not a gazette document, but rather an office memorandum, unlike the initiation notification, therefore, parties did not have sufficient notice of the PCN notification to decide whether or not to participate in the investigation.
53. The Authority notes that the Supreme Court, in the case of *Union of India v. Kumbho Petrochemicals*,³⁰ has confirmed that under the AD Rules, the initiation notification is not required to be published in the Official Gazette. Rule 6(1) of the AD Rules stipulates that a 'public notice' is sufficient for the purpose of the initiation notification as opposed to a 'gazette notification'. The Scope Notification dated 16th June 2023 was also issued in the same form of a 'public notice' in terms of Rule 6(1) of the AD Rules, which was published on the DGTR website. All interested parties and embassies were directed to regularly visit the DGTR website for updates pertaining to the investigation. Therefore, the submission of the interested parties regarding the non-issuance of a gazette notification in this regard is unjustified. Further, the Authority has followed the same procedure in all other investigations. When the law (as confirmed by the Supreme Court) itself recognizes that a 'public notice' (as opposed to a gazette notification) is sufficient for initiation, the Authority fails to understand why the same manner of issuing a public notice of the PCN notification is not sufficient. It is also noted that the same approach regarding notification of scope has been adopted in all previous investigations.
54. It is also pertinent to note that Republic of Korea made detailed submissions in the oral hearing and filed written submissions regarding the Scope Notification dated 16th June 2023. Therefore, the argument of the parties that the Scope Notification was not publicized and made aware to all interested parties is unfounded.

²⁹ Disclaimer, Manual of Standard Operating Practice.

³⁰ (2017) 8 SCC 307.

C.3.4 Product under consideration and like article

55. The applicant has claimed that the article manufactured by them, and the subject goods imported from the subject countries are comparable in terms of physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing, and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The other interested parties have not disputed the applicant's claim concerning the goods manufactured by the domestic industry being a 'like article' to the subject goods. The Authority, therefore, holds that the goods produced by the domestic industry are 'like article' to the subject goods imported from the subject countries in terms of Rule 2(d) of the AD Rules, 1995.

C.3.5 Issues related to Product Control Numbers

56. Hansung made the following submissions regarding the Product Control Numbers (PCN) adopted by the Authority:

- a. The final PCN methodology does not result in a fair comparison as it excludes the length and includes a broad classification of the outside diameter of the Chisel.
- b. The outside diameter and length are important criteria to determine the unit price of the chisel.
- c. Unit price of chisel will vary depending on the length of the chisel. For instance, chisel that is of greater length will have a greater unit price since it will have a larger amount of alloy steel.
- d. The outside diameter must not be classified as a broad range as it will distort the prices and result in an unfair price comparison.
- e. The PCN methodology adopted by the Authority does not permit a fair comparison and is in violation of Article 2.4 of the Anti-Dumping Agreement and is in contravention of the WTO Panel's observations in *Morocco – Definitive AD Measures on Exercise Books* (Tunisia) [DS 578].

57. D&A and Everdigm made the following submissions regarding the Product Control Numbers adopted by the Authority:

- a. The PCN methodology adopted by the Authority lacks objectivity. There exists a huge price variation across the seven components.
- b. Article 2.4 of the Anti-Dumping Agreement and paragraph 6(i) of Annexure-I to the AD Rules mandates a fair comparison between the export price and normal value. The PCN

methodology does not permit a fair comparison.

- c. The WTO Panel in *Argentina – Ceramic Tiles*³¹ observed that fair comparison would take into account the differences in physical characteristics of the PUC.
 - d. There would be astronomical differences in the physical characteristics, end-uses of the PUC in terms of them being separate components, assemblies, and sub-assemblies.
 - e. The broadened scope of the PUC and the simplistic PCN classification does not permit a fair comparison.
58. DOZCO made the following submissions regarding the PCN classification adopted by the Authority:
- a. A chisel of the same diameter does not differ much in length. This is because the tensile strength of the chisel of a specific diameter is inversely proportionate to the length of the chisel.
 - b. The PCN methodology adopted by the Authority ensures that a fair comparison is undertaken.
 - c. The Authority is not comparing any assemblies/sub-assemblies to the fully assembled hydraulic rock breaker.
 - d. A separate PCN has been notified for the seven specified sub-assemblies.
 - e. The very objective of notifying the PCN methodology is to ensure “fair comparison”.

C.3.6 Examination by the Authority regarding the PCN Methodology

59. At the outset, the Authority notes that it has already held that the goods imported from the subject countries are like articles to the products manufactured by the domestic industry. Therefore, no occasion of unfair comparison arises in the present investigation. The Authority notes that the unit of measurement adopted for the present investigation is MT and not ‘pieces’ or ‘units’. Therefore, when the Authority undertakes a comparison to determine the dumping margin, the export price and normal value are compared on a weighted average basis (price per MT and not price per piece). The comparison is not happening on a per pcs/set/units basis. Therefore, the prices of individual assemblies and sub-assemblies have not been compared to the prices of individual hydraulic rock breakers. Price variations among units of different assemblies and the fully assembled hydraulic rock breakers may not affect price comparability since the comparison is made on a weighted average basis. Thus, the contentions of the other interested parties that the PCN

³¹ Report of the Panel, *Argentina – Definitive Anti-Dumping Measures on Carton-Board Imports from Germany and Definitive Anti-Dumping Measures on Imports of Ceramic Tiles from Italy*, [WT/DS189/R](#).

notification does not permit a fair comparison are not appropriate.

60. With respect to the claims that the length and diameter of chisels must be considered, the Authority notes that during the discussions regarding the PCNs with the interested parties, the investigating team was apprised of the fact that hydraulic rock breakers of a certain weight can accommodate a chisel only up to a fixed diameter. For example, chisels having diameter ranging between 0 – 75 mm can only be mounted in hydraulic rock breakers of the weight ranges between 0 – 500 kg. Thus, the diameter of chisel which could be mounted on a rock breaker can be used to ascertain the weight of the rock breaker itself. As far as length of the chisel is concerned, the Authority notes that the impact of this parameter would be reflected in the weight of the chisel since chisels of higher length would have a higher weight. Therefore, the claims of the other interested parties in this regard are unsubstantiated.

D SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.1 Submissions made by the other interested party

61. *DAEMO Engineering Co. Ltd., Ningbo Yinzhou Get Machinery Ltd., Soosan Heavy Industries Co., Ltd., and FEEL Industrial Engineering Co. Ltd.* have made the following submissions regarding the scope of the domestic industry and its standing:
- a. DOZCO has imported the PUC under HS codes 8431 49 90 and 8431 49 30 during the POI from the subject countries.
 - b. DOZCO has imported Rs. 124 crores worth of parts and components from the subject countries, which include about Rs. 23 crores worth of assembly and sub-assemblies of Alloy Steel Chisel/Tool and Hydraulic Rock Breaker.
 - c. DOZCO is an importer of the product under consideration and, therefore, it cannot be considered as a domestic industry as per Rule 2(b) of the AD Rules.
 - d. Manufacturing means the process of building or assembling something, especially in a factory. Manufacturers who are assembling the parts/components and making the final product in the assembled form shall be considered as manufacturer. The petitioner has not considered such manufacturers as eligible domestic producers while determining the standing of the domestic industry.
 - e. DOZCO, during the oral hearing has submitted that there are other manufacturers of alloy steel chisel/tools and hydraulic rock breakers who import all or some of the parts and

components from the subject countries and assemble the same in India to make the PUC.

- f. If the Authority continues with the enhanced scope of the PUC, then it should re-examine the standing of the domestic industry and analyse: (1) whether the applicant has commercial production of parts and components during the POI and injury period; (2) whether the applicant has sales of parts and components being manufactured by them in the Indian market; (3) whether there are commercial volumes sales of parts and components; (4) whether the domestic industry is being injured by the imports of parts and components; (5) whether the domestic industry is importing the seven assemblies / sub-assemblies mentioned in notice dated 16th June 2023.
 - g. As per Rule 2(b) of the AD Rules, importers must be excluded from the definition of the domestic industry.
 - h. Another interested party has alleged that DOZCO has imported assemblies and sub-assemblies worth at least INR 27 crores from the subject countries and has over total purchase of around INR 200 crores during the period of investigation under HS codes 84314930 and 84314990.
 - i. The Petitioner has not considered such manufacturers as eligible domestic producers.
62. *Hyundai Everdigm Corp.*, and *D and A Heavy Industries Co. Ltd.* have made the following submissions regarding the standing of the domestic industry:
- a. The petitioner is importing and locally sourcing components, assemblies/sub-assemblies and merely assembling the same (with or without modification/precision machining) to manufacture fully assembled hydraulic rock breakers.
 - b. There are several other producers of hydraulic rock breakers (with or without chisel) in India. The Authority should determine the standing of the domestic industry by including the production quantities of such producers.
 - c. The applicant has not included the other producers of hydraulic rock breakers in their application.
 - d. The other producers of hydraulic rock breakers may not be suffering any injury at all due to the alleged dumping of the PUC.
 - e. The claim of the petitioner that they are making a value addition in the range of 80-90% to the raw materials, which no other manufacturer undertakes is not present in the petition.
 - f. 80-90% value addition criterion has never been a standard which has been adopted by the Authority in previous investigations. If this were the case, significant number of anti-dumping determinations would be considered bad in law.

- g. Under Rule 25(2)(a)(ii), for the purpose of anti-circumvention investigations, value addition of 35% for an exporter is considered sufficient.
 - h. The standing of the domestic industry must be determined separately for each upstream product – namely, components, assemblies and sub-assemblies.
 - i. The applicant has not accounted for any captive consumption of the sub-assemblies, assemblies, or components.
 - j. The applicant is not manufacturing the components, assemblies, or sub-assemblies, and therefore, they cannot be considered as the ‘domestic industry’ of these upstream products.
 - k. If the applicant is manufacturing these components, it must be seen whether they are commercially sold in the market or not.
 - l. DOZCO has not provided a non-confidential summary of the manufacturing process, which makes it difficult for the interested parties to comment on the same.
 - m. In Proforma IVA and Format VI-1 of its application, DOZCO mentions the captive consumption of raw materials/components as ‘nil’, which indicates that DOZCO is either importing or locally sourcing its components, assemblies and sub-assemblies and merely assembling them, without modifications into fully assembled HRB.
 - n. As per the Manual of SOP, and the Ld. CESTAT’s decisions in *Oxo Alcohols* and *Technova Imaging*, the applicant should undertake manufacturing of the PUC to qualify as a ‘domestic industry’.
 - o. If DOZCO is not manufacturing assemblies/sub-assemblies or components, it cannot be considered as a domestic industry of these upstream products. If DOZCO is manufacturing sub-assemblies, assemblies or components, the standing needs to be determined individually for each category.
 - p. In the anti-dumping investigation concerning *Penicillin-G Potassium*, the Authority determined the standing of the domestic industry for the intermediate and final products separately.
 - q. In the anti-dumping investigation concerning *Rubber Chemicals*, different classes of a product were examined separately for examining the share of production of the applicant company.
63. *Eddie* made the following submissions regarding the scope of the domestic industry and standing:
- a. The Authority is legally obligated to conduct separate standing analysis for each item covered in the product scope.

- b. This is not a case where PUC merely has different PCNs. There may be a scenario where for an individual item, DOZCO may not fulfil the standing requirement.
 - c. DOZCO is an importer of assemblies/sub-assemblies of rock breakers and does not qualify as a “domestic industry” in terms of Rule 2(b) of the AD Rules.
 - d. According to market intelligence, DOZCO has imported a total of 54,234 pieces valued at CIF USD 38,28,694.
 - e. Imports of assemblies/sub-assemblies from the subject country by DOZCO is significant and cannot be regarded as imports merely for research and development purposes.
 - f. DOZCO is not the sole producer of the PUC in India. There are at least eighteen other manufacturers of hydraulic rock breakers in India.
 - g. The Authority must determine whether the applicant accounts for 25% of the total Indian production, and then whether DOZCO and its supporters constitute more than 50% of total domestic production in India.
 - h. Value addition or backward integration is not relevant in determining whether other Indian manufacturers of the PUC qualify as domestic industry.
 - i. In *EC – Salmon (Norway)*, the Panel held that “producers” means any enterprise which brings into existence any type of the PUC through mental or physical labour.
 - j. Even those producers who import certain parts of rock breakers and manufacture hydraulic rock breakers in India should be considered as a part of the domestic industry.
 - k. In the anti-dumping investigation on *Aluminium foil of 80 micron and below from China PR*, the producers who had imported raw materials were considered to be a part of the domestic industry.
64. *FINE and FYN* made the following submissions regarding the scope of the domestic industry and standing:
- a. No information has been provided by DOZCO regarding the imports of assemblies/sub-assemblies by DOZCO and other Indian producers.
 - b. During the oral hearing DOZCO’s counsel submitted that they are engaged in imports of sub-assemblies.
 - c. *FINE* and *FYN* are manufacturers of the PUC and it is false for DOZCO to claim that they are the sole producers of the PUC in India.
 - d. As per the decision of the Hon’ble Supreme Court in the case of *Delhi Cloth Mills*³², any process that results in change of either name, character or use must be construed as

³² 1962 (10) TMI 1 – SC.

- manufacturing process.
- e. FINE and FYN are engaged in import as well as domestic procurement of various parts and assemblies thereof into PUC.
 - f. The raw materials manufactured by FINE and FYN undergo a substantial change in its name character and use by way of producing the finished goods. There is 10% to 40% value addition in the entire process.
 - g. Several other producers in India engaged in same or similar manufacturing process.
65. *Hansung* made the following submissions regarding the scope of the domestic industry and standing:
- a. The Authority must clearly determine whether there are any other domestic manufacturers of the assemblies and sub-assemblies.
 - b. DOZCO claims that it is the sole manufacturer with value addition of 80% of the PUC, whereas other entities import parts of rock breaker and assemble them in India.
 - c. The Income Tax Act, 1961, the Central GST Act, 2017, the Factories Act, 1948 and the Consumer Protection Act, 2019, does not take into account value addition while defining “manufacture”.
 - d. In the case of *CIT v. Tata Locomotive and Engineering Co*³³, the Bombay High Court held that “manufacture” also includes assembly.
 - e. In Article 3.4 of the India-Korea CEPA, the Rules of Origin specify that goods not wholly obtained or produced within a country can also be considered to be originating from that country.
 - f. The petitioner’s contention that all other entities in India are not relevant since they only import and assemble parts is not relevant since they themselves import large quantities of assemblies and sub-assemblies.
 - g. The definition of manufacture can also include assembly depending on the product and will vary on a case-to-case basis.
 - h. DOZCO’s argument that no separate standing analysis should be conducted for assemblies and sub-assemblies is absurd since such an investigation is arbitrary and wholly untenable in law.
 - i. The support letters received from fourteen companies must not be accepted since it does not contain the information as prescribed in Trade Notices Nos. 13 and 14 of 2018.

³³ (1968) 68 ITR 325 Bom.

D.2 Submissions made on behalf of the domestic industry

66. The applicant has made the following submissions regarding the scope of the domestic industry and its standing:
- a. The petitioner is the sole producer of the PUC and its parts in India, and therefore satisfies the requirements of Rules 2(b) and 5(3) of the AD Rules.
 - b. There may be entities which import parts of rock breakers and assemble them in India, however, such entities cannot be considered as manufacturers for the purpose of the present investigation.
 - c. In the SSR investigation pertaining to *Synchronous Digital Hierarchy Transmission Equipment from China and Israel*, the Authority has not defined domestic production based on the geographical location of the assembly.
 - d. The Authority has ruled that merely assembling a product from sub-assemblies does not qualify an importer as a domestic producer.
 - e. Standing of the domestic industry must be determined in relation to the PUC as a whole and not individual assemblies and sub-assemblies.
 - f. The definition of producers cannot be derived from other statutes like the GST Act, Factories Act and Income Tax Act.
 - g. In *EC – Salmon (Norway)*, the Panel held that all producers that bring a thing into existence constitutes a domestic producer.
 - h. In *SDH Transmission Equipment from China*, the Authority held that the meaning of production must be determined on a case-to-case basis.
 - i. DOZCO imports assemblies and sub-assemblies for research and development purposes only. The total imports of parts and components by the domestic industry are less than 2% of the total imports of the PUC in India.
 - j. From the best information available with the domestic industry, the other manufacturers are importing the assemblies and sub-assemblies and merely assembling them in India.
 - k. The definition of domestic producers cannot be so broad to include importers of the subject goods. Such an interpretation would inherently lead to an absurdity in law specifically in anti-dumping investigations involving capital goods.
 - l. FINE and FYN who are merely engaged in assembling various assemblies and sub-assemblies of a rock breakers cannot be considered as manufacturer.
 - m. In capital goods investigation, the Authority is not under any obligation to individually examine domestic industry for each part which goes into capital goods as observed by the Authority in the anti-dumping investigation concerning SDH equipment.

D.3 Examination of the Authority.

67. The Authority notes that the following two issues arise for consideration:
- a. Whether applicant satisfies the ‘standing test’?
 - b. Whether in view of the imports made by the applicant, the applicant constitutes domestic industry in terms of Rule 2(b)?

D.3.1 Whether applicant satisfies the ‘standing test’?

68. Rule 5(3) (a) of the AD Rules, 1995 lays down the following:

“(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless –

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like article by the domestic industry, and . . .

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.”

69. Other interested parties submitted that DOZCO is not the sole producer of the PUC in India, and there are several others that are manufacturing the product by way of assembling assemblies/sub-assemblies and components in India. If their production is also accounted for, the domestic industry would not satisfy the standing requirement.
70. DOZCO submitted that the other alleged producers of the PUC in India are not ‘producers’ in the true sense of the term, but are importers that merely assemble the goods in India and sell the same. DOZCO claims that it is the only producer of hydraulic rock breakers in India that account for [***]% value addition, whereas all other producers have very minuscule value addition in their products since they merely import parts and assemble the same. DOZCO relies on the findings of the Authority in SDH Transmission Equipment from

China to support its contention.

71. The other interested parties counter DOZCO's claim by stating that value addition of production is immaterial in determining the standing of the domestic industry. According to them, to 'manufacture' and to 'produce' also means to 'assemble'. Therefore, any entity that assembles is also a manufacturer of the PUC.
72. The Authority notes the concerns of the other interested parties that the definition of the 'domestic industry' requires a closer inspection, and it must be seen whether the other alleged producers of the PUC satisfy the requirements of Rule 2(b). However, any determination as to whether DOZCO fulfils the requirements of Rule 2(b) in the light of these claims can only be made if there is any verifiable information regarding the total domestic production in India.
73. The Authority notes that none of the other interested parties have provided any reliable estimate as to the total domestic production of the PUC in India. Eddie, D&A, Everdigm, FINE and FYN have merely mentioned the names of some other alleged producers of the PUC, however, have not provided any further information. However, none of the interested parties have provided any verifiable data as to whether or not these alleged other producers have manufacturing facilities that enable them to produce the PUC in India or whether they are merely traders and importers of the subject goods, who assemble the goods in India and resell it in the market. The other interested parties have also not provided any information on whether these other alleged producers are engaged in imports, and if so, to what extent. Even if it is assumed that all these other alleged producers of the PUC are in fact engaged in production of the PUC, the Authority would require information regarding the production of these entities. However, none of the other interested parties have provided even the basic information regarding the production output of these other alleged producers of the PUC. Further no alleged producer of the PUC has come forward to provide information regarding its status.
74. Merely providing a list of entities and claiming they are producing the PUC is insufficient. A party intending to dispute the standing of the domestic industry must, at the very least, provide basic information which, even if not complete, would allow the Authority to draw reasonable inferences or make assumptions. The claims regarding standing made by the other interested parties remain mere allegations and conjectures that are not backed by any evidence whatsoever. In the absence of such information, any discussion on these legal issues remains academic at best.
75. FINE and FYN, in their post-oral hearing written submissions, have claimed that they

import and assemble various parts, components, assemblies and sub-assemblies and sell the PUC in India, with value addition of ***. FINE and FYN, therefore, claim that they must be considered as domestic producers of the PUC. The Authority notes that Fine and FYN have both filed the appendices to the importer questionnaire issued by the Authority. Moreover, in their responses to the economic interest questionnaire, they claim to be importers of the PUC. This admission of their status itself disqualifies them from claiming to be domestic producers. Further, the Authority had circulated a questionnaire for “other domestic producers” to provide information. However, none of the other alleged producers or FYN and FINE have provided information as “other domestic producer”, as is requested by the Authority after the initiation of the investigation.

76. Furthermore, FINE and FYN have claimed the status of a domestic producer only at the stage of oral hearing. This claim is an afterthought and not substantiated with relevant evidence as required under AD Rules, 1995. Therefore, in view of the above and FINE and FYN’s admission as an importer, the Authority has not considered FINE and FYN as producers of the PUC.
77. Given that no interested party has provided any information regarding the total domestic production, the Authority is constrained to apply facts available to determine the standing of the domestic industry. Since there is no verifiable information that the other entities are engaged in the production of the PUC, the Authority, on the basis of facts available, holds that DOZCO constitutes more than 25% of the total domestic production of the PUC in India.

D.3.2 Whether in view of the imports made by the applicant, the applicant constitutes domestic industry in terms of Rule 2(b)?

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

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

79. The other interested parties have raised serious claims that DOZCO has imported large volumes of the PUC from the subject countries. DOZCO submitted that its imports account for 2% of the total domestic demand in India and have merely imported the PUC

for research and development purposes.

80. Rule 2(b) of the AD Rules, 1995 lays down that in situations wherein a domestic producer or its related party has made imports of the subject goods from the subject countries, the Authority may not consider such a producer as an eligible domestic producer.
81. The Authority recalls that under Rule 2(b) of the AD Rules, 1995, a domestic producer may be excluded from the scope of the 'domestic industry' if it is an importer of the subject goods from the subject country or it is related to any exporters or importers of the alleged dumped goods. The use of the word 'may' in Rule 2(b) of the AD Rules, 1995 suggests that the Authority has the discretion to even include the domestic producers that are also importers of the subject goods into India within the scope of the 'domestic industry', or that are related to exporters or importers of the subject goods.
82. In the case of *Gujarat Fertilizers & Chemicals Ltd.*,³⁴ the High Court of Calcutta observed that the question of whether a domestic producer which has imported the subject goods is disqualified from the scope of 'domestic industry' under Rule 2(b) of the AD Rules must be examined based on the nature of activities carried out by the domestic producer with respect to the imports made by it.
83. The Authority notes the serious concerns expressed by the other interested parties. During the oral hearing DOZCO stated that it has imported miniscule quantities of the assemblies and sub-assemblies. FEEL, Soosan, DAEMO and Ningbo provided transaction-wise details of the imports made by DOZCO under HSN 84314990 and 84314930 during the POI from the subject countries. Eddie also provided the quantum and volume of PUC and NPUC (non-PUC) imports made by DOZCO. The investigation team directed DOZCO to comment on the same and requested DOZCO to identify which transaction involved imports of the PUC.
84. DOZCO filed its response, wherein it identified the transactions pertaining to the PUC and the NPUC. The investigating team verified the response filed by DOZCO regarding this import statement. Based on DG systems data and import data provided by DOZCO, it is noted that DOZCO had imported [***] MT of the subject goods from the subject countries.
85. DOZCO claimed that almost [***%] of the imports made by it were meant for research and design. It further claimed that it was forced to import the rest of the volume due to competition from low-priced imports from the subject countries, which impact its ability to produce such assemblies and sub-assemblies.

³⁴ *State of Gujarat Fertilizers & Chemicals Ltd. v. Designated Authority and Ors.*, 2012 SCCOnLine Cal 8071.

86. In the case of *Gujarat Fertilizers & Chemicals Ltd.*, the High Court of Calcutta noted that an applicant, which imported 15% of the total production of the PUC, was not disqualified from the meaning of the domestic industry in terms of Rule 2(b) since the essential character of the applicant had not changed. The Authority notes that DOZCO had imported [***] MT. The imports made by DOZCO (other than for R&D) constitute only about 1% of the total domestic demand of hydraulic rock breakers in India. Imports are insignificant in relation to the total domestic demand in India.
87. DOZCO has explained that it was forced to import the subject goods due to aggressive dumping of the subject goods by exporters from the subject countries. Further, DOZCO has imported only assemblies and sub-assemblies. DOZCO does not resell these assemblies and sub-assemblies for trading, but rather uses the same for manufacturing hydraulic rock breakers. DOZCO, therefore, cannot be considered to be a trader of imported goods. Hence the essential characteristic of DOZCO as a manufacturer has not changed. In this regard, it may be noted that Eddie, D&A, Everdigm, Hansung, Fine and FYN have submitted that entities that import assemblies, sub-assemblies and components and assemble the same must be considered as manufacturers of Hydraulic Rock Breakers in India. However, Fine and FYN have admitted that they are importers of the PUC and have not filed relevant information with the Authority pertaining to other domestic producers. Accordingly, for the reasons stated above, the Authority holds as follows:
- a. On the basis of facts available with the Authority, DOZCO constitutes at least 25% of the total domestic production in India; and
 - b. DOZCO satisfies the definition of ‘domestic industry’ in terms of Rule 2(b) of the Rules.

E CONFIDENTIALITY

E.1 Submissions made by the other interested parties

88. DAEMO Engineering Co. Ltd., Ningbo Yinzhou Get Machinery Ltd., Soosan Heavy Industries Co., Ltd., and FEEL Industrial Engineering Co. Ltd. have made the following submissions with regard to confidentiality:
- a. The non-confidential version of the petition does not allow for a reasonable understanding of the allegations contained therein.
 - b. The purpose of Rule 7 of the AD Rules is to enable all interested parties in an anti-

dumping investigation sufficient understanding of the information provided on a confidential basis.

- c. The petition fails to meet the standards laid down in Rule-7 of the AD Rules, read with Trade Notice No. 1/2013 dated 9th December 2013.
- d. The domestic industry has claimed excessive confidentiality and filed an incomplete petition regarding the costing information, annual reports/financial statements, even though the same are available on the MCA portal.
- e. The defence of all parties cannot be fully exercised since significant data provided in the petition is not properly indexed or provided in the non-confidential version.

89. Eddie has submitted as follows with regard to confidentiality:

- a. The applicant failed to disclose the necessary information as prescribed in the AD Rules and trade notices.
- b. The applicant has failed to provide non-confidential information as to write-up on the manufacturing process, names of raw materials used, country-wise estimates of normal value and NIP calculation.
- c. Eddie has provided the non-confidential version of its EQR with all interested parties, including the applicant.

90. Everdigm and D&A has submitted as follows with regard to confidentiality:

- a. In *Sterlite Industries (India) Ltd. v. Designated Authority*, the Supreme Court held that confidentiality is not something which must be automatically assumed.
- b. In *Reliance Industries v. DA*, the Supreme Court held that the DA is vested with the obligation to evaluate whether or not the claim for confidentiality is justified.
- c. DOZCO has claimed excess confidentiality in its application on figures related to R&D, Expenses, Funds Raised, NIP, etc. DOZCO has failed to comply with trade notice no 10/2018.
- d. Excess confidentiality does not provide the Respondents an adequate opportunity to properly defend themselves.
- e. The Authority may closely verify the basis of allocation of assets, current liabilities and resultant impact on depreciation, ROCE, and NIP.

E.2 Submissions made by the domestic industry

91. DOZCO submitted as follows with regard to confidentiality:

- a. Eddie, Volvo, JCB India and Fine Equipments have not circulated the non-confidential versions of their submissions.
- b. Despite the fact that the unit of measurement is MT, parties have provided information in pieces.
- c. The non-confidential version of the submissions of interested parties are deficient in terms of trade notice no. 10/2018.
- d. The Authority has already issued a deficiency notice to the NCV petition filed by DOZCO, and DOZCO has duly complied with the same.

E.3 Examination of the Authority

92. With regard to the confidentiality of the information/data submitted by the interested parties, Rule 7 of the AD Rules provides as follows:

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

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

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

93. The information and data submitted by the interested party and the domestic industry on a confidential basis was examined with regard to the sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted, and such information has been considered confidential and not disclosed to the other interested party. Wherever required, parties providing information on a confidential basis were directed to provide a sufficient non-confidential version of the information filed

by them on a confidential basis. The Authority repeatedly directed all parties to share the non-confidential version of their submissions through e-mails.

94. DOZCO had incorrectly established the trend figures. The same was rectified after it was directed to do so at the stage of oral hearing and DOZCO circulated the same to all other interested parties.

F MISCELLANEOUS SUBMISSIONS

F.1 Submissions made by the other interested parties

95. DAEMO Engineering Co. Ltd., Ningbo Yinzhou Get Machinery Ltd., Soosan Heavy Industries Co., Ltd., and FEEL Industrial Engineering Co. Ltd. have made the following submissions regarding miscellaneous issues:
- a. The applicant, in the oral hearing claimed that it has been facing significant losses throughout the injury period and the POI except in the previous year 2020-21. The indexed data filed by the domestic industry in its NCV application does not show this. Rather, it shows huge profits in all years except 2020-21.
 - b. The applicant has made an error in the indexation methodology hence there is a different economic outlook in all parameters. In view of this the producer/exporter must be directed to correct the non-confidential petition and clarify the errors.
 - c. The Authority must hold a 2nd Oral Hearing once the correct NCV has been circulated.
 - d. The data provided by the domestic industry is for the period April to June 2021, whereas the POI is from 1st April 2021 to 31st March 2022.
 - e. During the oral hearing, DOZCO submitted that they have included parts and components within the import data. the inclusion of parts and components within the total import data has skewed the import volumes and import prices.
 - f. Parts and components are almost 30 to 40% lower in price and therefore, it appears that there is an increase in volumes at reduced prices.
 - g. The domestic industry has not disclosed the methodology for conversion of the import data from pieces into MT.
 - h. The domestic industry has applied some arbitrary basis which has resulted in incorrect and inflated import volume at distorted prices.
 - i. Exporters do not maintain weight wise data of parts and components sold by them.

- j. The letters of support filed by the Petitioner in their written submissions must not be considered by the Authority at this stage since it does not contain information in the prescribed format.
96. Hansung has made the following submissions regarding miscellaneous issues:
- a. The petitioner itself has not reported the data according to the PCN methodology. The domestic industry has not revised its original application in the light of the PCN notification.
 - b. The Authority must consider the unit price data of the PUC per kg and not per piece for comparing the unit price of PUC.
 - c. The price of chisels sold by Hansung in the domestic markets and the export price are considerably different in the case of price per unit due to variance in lengths.
 - d. For fair comparison the PUC must be compared by unit price per kg.
 - e. The Petitioner has not reported data according to the PCN Methodology. The petitioner revised its data submissions, but has not separately included data concerning assemblies/sub-assemblies.
 - f. The data provided by the Petitioners is incomplete for the purpose of a fair comparison.
 - g. The import data considered by the Petitioner is from unreliable sources.
97. FINE and FYN made the following miscellaneous submissions:
- a. Levy of anti-dumping duties will increase the cost of goods sold by importers. It is unlikely that such costs will be borne by downstream users.
 - b. Importers will bear the costs and are likely to be wiped out.
 - c. If the downstream industry absorbs the increase in costs, the industry would be forced to increase the price of its services, leading to inflated costs of infrastructure development.
 - d. The PUC is installed as an accessory/tool over the main machinery to perform a specific function. There is no alternative to the PUC.
 - e. The PUC is prone to high wear and tear. These items are imported frequently for replacement. Any increase in cost is highly detrimental to the end users.
 - f. Tools and parts are specifically designed and developed by each manufacturer to fit respective design of rock breakers. Tools and parts of one manufacturer is not interchangeable with others.
 - g. Chisels are custom made as per specification and design of the rock breakers and cannot be mass produced.

- h. Aftersales support offered by manufacturers are an important component of the business of manufacturers. The goods require frequent aftersales support due to high wear and tear. A buyer has to think about the ability of manufacturers to be able to provide efficient services across the country since any delay/non-availability of services can obstruct the entire equipment and machinery.
- i. Price is not the only factor influencing buying decisions.

F.2 Submissions by the domestic industry

98. No contesting miscellaneous submissions have been made by the domestic industry.

F.3 Examination of the Authority

99. As regards the non-reliability of the import data submitted by the applicant, the Authority has examined the import data provided by DG Systems and not the third-party information provided by the applicant. Further, wherever there were errors or discrepancies in the information provided by the parties, the Authority has directed all parties to rectify the same and circulate a non-confidential version to all other parties.
100. Interested parties further submitted that due to the differences in prices of different parts of hydraulic rock breakers and the rock breakers themselves, there would be unfair price comparison. In this regard, the Authority has already addressed concerns of unfair price comparison above. The Authority reiterates that the unit of measurement adopted for the present investigation is MT and not 'pieces' or 'units'. Therefore, when the Authority undertakes comparison for the purpose of determining the dumping margin, the export price and normal value are compared on a weighted average basis (price per MT and not price per piece). The comparison is not happening on a per unit basis. Therefore, the prices of individual assemblies and sub-assemblies have not been compared to the prices of individual hydraulic rock breakers. Price variations among units of different assemblies and the fully assembled hydraulic rock breakers does not affect price comparability since the comparison is made on a weighted average basis.

G MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

G.1 Market Economy Treatment (MET) and Normal Value

G.1.1 Submissions of the other interested party

101. Eddie made the following submissions regarding market economy treatment and normal value:

- a. The Authority should follow the principle of fair comparison as per Article 2.4 of the AD Agreement and Para 6(i) of Annexure-I to the AD Rules to determine the normal value, export price and dumping margin.
- b. The cost of assembly/sub-assembly of rock breaker is different from fully assembled rock breaker.
- c. Each assembly requires different moulding, heat treatment and raw materials. The cost would also be different from the cost of fully assembled rock breakers as an assembled rock breaker is made from several components and assemblies/sub-assemblies, each with a different costs structure.
- d. The Authority should compare the assemblies/sub-assemblies of rock breakers separately from a fully assembled rock breaker.
- e. Eddie has completely cooperated with the Authority in the investigation and must be granted a cooperative rate in this investigation.

G.1.2 Submissions of the domestic industry

102. The domestic industry has made the following submissions with respect to the market economy treatment and normal value:

- a. D&A has filed an exporter questionnaire response, however failed to file the importer questionnaire response for its related importing entity, EPIROC. Therefore, D&A's response must be rejected.
- b. DAEMO's related entity in India, DAEMO Engineering India Pvt. Ltd. has not filed the importer questionnaire response. Therefore, DAEMO's response must be rejected.
- c. Parties have provided information of PCN in pieces, when clear instructions were provided that the unit of measurement is MT.
- d. The normal value of Chinese producers/exporters must be computed on the basis of paragraph 7 of Annexure-I to the AD Rules since China PR is a Non-Market Economy.

- e. Certain exporter/producers of the goods have not cooperated with the Authority, the Authority must treat them as non-cooperating and reject their questionnaire response.

G.1.3 Examination by the Authority

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

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

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

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

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

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

104. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have co-operated in this investigation by filing the questionnaire response:

- a. Daemo Engineering Co. Ltd.
- b. Ningbo Yinzhou Get Machinery Ltd.
- c. Soosan Heavy Industries Co., Ltd.
- d. FEEL Industrial Engineering Co. Ltd.

- e. Yantai Eddie Precision Machinery Co., Ltd.
- f. Hansung Special Machinery Co. Ltd.
- g. Hyundai Everdigm Corporation
- h. D and A Heavy Industries Co., Ltd.

105. The normal value and export price for all producers / exporters from the subject countries have been determined as below.

G.1.3.1 Normal Value and Export Price of Producers/Exporters from China PR

106. Article 15 of China's Accession Protocol to the WTO provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use

methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

107. The treatment of China PR as a non – market economy does not solely stem from Article 15 (a) (ii) –but also flows from the remaining text of Article 15 i.e., subparagraph (a), as well as the broader rules set forth in Article VI of GATT 1994³⁵ and Article 2.2.1.1 of the WTO Anti-Dumping Agreement. As per the current international framework emerging from Article 15 of China’s Accession Protocol, read with GATT Article VI and Article 2.2.1.1 of the Anti-Dumping Agreement, there are no restrictions in treating China PR as non-market economy. It is noted that although Article 15 (a)(ii) has expired, Article 2.2.1.1 of the Anti-Dumping Agreement read with the Article 15(a)(i) of China’s Accession Protocol to the WTO indicate that producers/exporters from China PR may be required to prove that market economy conditions exist in China PR. Further, paragraph 8 of Annexure I to the AD Rules stipulates that any country that has been determined to be or has been treated as a non-market economy country, is presumed to be a non-market economy. Exporters from

³⁵ See Second [Ad Note](#) to GATT Article VI from Annex I, which reads as under:

2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

such country may rebut such a presumption by providing information/evidence stipulated in paragraph 8(3) of Annexure-I to the AD Rules in the form of a response to the supplemental questionnaire issued by the Authority. Therefore, the burden is on the producers/exporters to prove that Market Economy Conditions prevail in the subject country.

108. The Authority has a consistent practice of treating China PR as a Non-Market Economy. It is noted that since the responding producers/exporters from China PR has not filed a response to Market economy treatment/Supplementary questionnaire to dispute the presumption that market economy conditions exist in China PR, the normal value computation is required to be done as per the provisions of paragraph 7 of Annexure I of the Rules, which reads as under:

“7. In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or 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. 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.”

109. It is noted that paragraph 7 of Annexure-I to the AD Rules stipulate three methods of constructing the normal value for non-market economies: (a) on the basis of price or constructed value in a market economy third country; (b) export price from a third country to other countries, including India; and (c) on any other reasonable basis. The Authority notes that under the provisions of paragraph 7 of Annexure-I to the AD Rules, the normal value must first be determined on the basis of the price or constructed value in a surrogate country, or the price of the exports from such country to other countries, including India. However, when such basis is not possible, only then the Authority can determine the

normal value on any other reasonable basis, including the price paid or payable in India.³⁶

110. It is to be noted that no information/evidence has been provided by the parties for the construction of the normal value on the basis of the first and the second methods. There is no data available with respect to the price or constructed value of the subject goods produced in a market economy third country. Further, the HS code under which the PUC is being imported also includes other products which are not covered in the scope of the PUC. Therefore, extrapolating the export price of the subject goods from third country to other countries is not possible since the export data for the relevant HS code under which the PUC is being imported also includes other products which are not covered in the scope of the PUC. There is also no public data available with the Authority to determine the normal value from the above two methods. In the absence of the above information/evidence, it is not possible for the Authority to determine normal value on the basis of the first or second method. Therefore, the Authority has decided to construct normal value for all exporters/producers from China PR based on the third method, i.e., on any other reasonable basis including the price actually paid or payable in India. The Authority has constructed the normal value on the basis of the price paid or payable in India.

G.1.3.2 Normal Value and Export Price of Ningbo Yinzhou Get Machinery Ltd.

- *Normal Value*

111. The normal value for Ningbo has been computed on the basis of the principles explained in relevant paragraphs above.

- *Export price*

112. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that Ningbo is a producer and exporter of the subject goods from China PR. Ningbo has exported *** MT of hydraulic rock breakers (including assemblies and sub-assemblies) directly to its unrelated customers in India and *** MT of Chisels directly to its unrelated customers in India during the POI. Ningbo provided the relevant information in the form and manner required and has claimed adjustments on account of inland transportation, and port and other expenses. The Authority has undertaken desk verification of the information submitted by Ningbo and examined Ningbo's claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Ningbo has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

³⁶ See *Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. & Ors.*, (2005) 3 SCC 39, paragraph 7.

*G.1.3.3 Normal Value and Export Price of Yantai Eddie Precision Machinery Co. Ltd.**- Normal Value*

113. The normal value for Eddie has been computed on the basis of the principles explained in the relevant paragraphs above.

- Export price

114. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that Eddie is a producer and exporter of the subject goods from China PR. Eddie has exported *** MT of hydraulic rock breakers (including assemblies and sub-assemblies) directly to its unrelated customers in India and *** MT of chisels directly to its unrelated customers in India during the POI. Eddie provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost, and bank charges. The Authority has undertaken desk verification of the information submitted by Eddie and examined Eddie's claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Eddie has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

*G.1.3.4 Normal Value and Export Price of non-cooperating producers/exporters from China PR**- Normal Value*

115. The normal value for non-cooperative producers/exporters from China PR has been computed on the basis of the principles explained in the relevant paragraphs above.

- Export price

116. The Authority has determined the export price for non-cooperating producers/exporters from China PR after considering the volume and value of imports based on data of cooperating producers from China PR. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission, and bank charges. The export price so determined is stated in the below – mentioned dumping margin table.

*G.1.3.5 Normal Value and Export Price of Producers/Exporters from Korea RP**G.1.3.6 Normal Value and Export Price of DAEMO Engineering Co. Ltd.**- Normal Value*

117. Based on the verified information furnished in the exporter's questionnaire response and

supplementary questionnaire responses, the Authority notes that DAEMO is a producer of the subject goods. It has exported the subject goods to India during the period of investigation to unrelated customers. The producer sells the subject goods to unrelated customers in the domestic market directly. DAEMO has sold *** MT of hydraulic rock breakers. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. Where the profit-making transactions for the subject goods were found to be more than 80%, all transactions in the domestic sales are being considered for the determination of normal value and in cases profit making transactions are less than 80%, only profitable domestic sales are being taken into consideration for the determination of the normal value. However, DAEMO has not passed the ordinary course of trade test and therefore, only profitable transactions have been considered. All adjustments claimed by the producer were found to be valid and therefore allowed. The normal value determined is mentioned in the dumping margin table.

- *Export price*

118. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that DAEMO is a producer and exporter of the subject goods from Korea RP. DAEMO has exported *** MT of hydraulic rock breakers (including assemblies and sub-assemblies) directly to its unrelated customers in India during the POI. DAEMO provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost, and bank charges. The Authority has undertaken desk verification of the information submitted by DAEMO and examined DAEMO's claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for DAEMO has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

G.1.3.7 Normal Value and Export Price of Soosan Heavy Industries Co., Ltd.

- *Normal Value*

119. Based on the verified information furnished in the exporter's questionnaire response and supplementary questionnaire responses, the Authority notes that Soosan is a producer of the subject goods. It has exported the subject goods to India during the period of investigation to unrelated customers. The producer sells the subject goods to unrelated customers in the domestic market directly. It has sold *** MT of hydraulic rock breaker and *** MT of chisels in its domestic market. The domestic sales are in sufficient volumes when

compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. Where the profit-making transactions for the subject goods are more than 80%, all transactions in the domestic sales are being considered for the determination of normal value and in cases profit making transactions are less than 80%, only profitable domestic sales are being taken into consideration for the determination of the normal value. However, Soosan has not passed the ordinary course of trade test and therefore, only profitable transactions have been considered. All adjustments claimed by the producer were found to be valid and therefore, allowed. The normal value determined is mentioned in the dumping margin table.

- *Export price*

120. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that Soosan is a producer and exporter of the subject goods from Korea RP. Soosan has exported *** MT of hydraulic rock breakers (including assemblies and sub-assemblies) directly to its unrelated customers in India and *** MT of chisels directly to its unrelated customers in India during the POI. Soosan provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost, and bank charges. The Authority has undertaken desk verification of the information submitted by Soosan and examined Soosan's claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Soosan has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

G.1.3.8 Normal Value and Export Price of FEEL Industrial Engineering Co. Ltd.

- *Normal Value*

121. Based on the verified information furnished in the exporter's questionnaire response and supplementary questionnaire responses, the Authority notes that FEEL is a producer of the subject goods from Korea RP. It has exported the subject goods to India during the period of investigation to unrelated customers. The producer sells the subject goods to unrelated customers in the domestic market directly. It has sold *** MT of hydraulic rock breakers in its domestic market. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. Where the profit-making transactions for the subject goods are more than 80%, all transactions in the domestic sales are being considered

for the determination of normal value and in cases profit making transactions are less than 80%, only profitable domestic sales are being taken into consideration for the determination of the normal value. However, FEEL has not passed the ordinary course of trade test and therefore, only profitable transactions have been considered. All adjustments claimed by the producer were found to be valid and therefore, allowed. The normal value determined is mentioned in the dumping margin table.

- *Export price*

122. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that FEEL is a producer and exporter of the subject goods from Korea RP. FEEL has exported *** MT of hydraulic rock breakers (including assemblies and sub-assemblies) directly to its unrelated customers in India. FEEL provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost, and bank charges. The Authority has undertaken desk verification of the information submitted by FEEL and examined FEEL's claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for FEEL has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

G.1.3.9 Normal Value and Export Price of Hansung Special Machinery Co. Ltd.

- *Normal Value*

123. Based on the verified information furnished in the exporter's questionnaire response and supplementary questionnaire responses, the Authority notes that Hansung is a producer of chisels. It has exported the subject goods to India during the period of investigation to unrelated customers. The producer sells the subject goods to unrelated customers in the domestic market directly. It has sold *** MT of chisels in its domestic market. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. Where the profit-making transactions for the subject goods are more than 80%, all transactions in the domestic sales are being considered for the determination of normal value and in cases profit making transactions are less than 80%, only profitable domestic sales are being taken into consideration for the determination of the normal value. However, Hansung has not passed the ordinary course of trade test and therefore, only profitable transactions have been considered. All adjustments claimed by the producer were found to be valid and therefore, allowed. The normal value determined is mentioned in the dumping

margin table.

- *Export price*

124. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that Hansung is a producer and exporter of the chisels from Korea RP. Hansung has exported *** MT of Chisels directly to its unrelated customers in India during the POI. Hansung provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost, packaging costs, brokerage fees, bank charges, loading expenses and credit export insurance. The Authority has undertaken desk verification of the information submitted by Hansung and examined Hansung claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Hansung has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

G.1.3.10 Normal Value and Export Price of Hyundai Everdigm Corp.

- *Normal Value*

125. Based on the verified information furnished in the exporter's questionnaire response and supplementary questionnaire responses, the Authority notes that Everdigm is a producer of hydraulic rock breakers and chisels. It has exported the subject goods to India during the period of investigation to unrelated customers. The producer sells the subject goods to unrelated customers in the domestic market directly. It has sold *** MT of hydraulic rock breaker in its domestic market. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. Where the profit-making transactions for the subject goods is more than 80%, all transactions in the domestic sales are being considered for the determination of normal value and in cases profit making transactions are less than 80%, only profitable domestic sales are being taken into consideration for the determination of the normal value. However, Everdigm has not passed the ordinary course of trade test and therefore, only profitable transactions have been considered. All adjustments claimed by the producer were found to be valid and therefore, allowed. The normal value determined is mentioned in the dumping margin table.

- *Export price*

126. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that Everdigm is a producer and

exporter of the chisels from Korea RP. Everdigm has exported *** MT of hydraulic rock breakers directly to its unrelated customers in India during the POI. Everdigm provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost, packaging costs, brokerage fees, bank charges, loading expenses and credit export insurance. The Authority has undertaken desk verification of the information submitted by Everdigm and examined Everdigm claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for Everdigm has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

G.1.3.11 Normal Value and Export Price of D and A Heavy Industries Co. Ltd.

- *Normal Value*

127. Based on the verified information furnished in the exporter's questionnaire response and supplementary questionnaire responses, the Authority notes that D&A is a producer of hydraulic rock breakers and chisels. It has exported the subject goods to India during the period of investigation to unrelated customers. The producer sells the subject goods to unrelated customers in the domestic market directly. It has sold *** MT of hydraulic rock breakers in its domestic market. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. Where the profit-making transactions for the subject goods are more than 80%, all transactions in the domestic sales are being considered for the determination of normal value and in cases profit making transactions are less than 80%, only profitable domestic sales are being taken into consideration for the determination of the normal value. However, D&A has not passed the ordinary course of trade test and therefore, only profitable transactions have been considered. All adjustments claimed by the producer were found to be valid and therefore, allowed. The normal value determined is mentioned in the dumping margin table.

- *Export price*

128. Based on the information furnished in the exporter questionnaire response and supplementary questionnaire response, the Authority notes that D&A is a producer and exporter of chisels from Korea RP. D&A has exported *** MT of hydraulic rock breakers (including assemblies/sub-assemblies) directly to its unrelated customers in India during the POI. D&A provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and

other related expenses, credit cost, packaging costs, brokerage fees, bank charges, loading expenses and credit export insurance. The Authority has undertaken desk verification of the information submitted by D&A and examined D&A claims and accordingly, the claims have been allowed. Accordingly, the net export price at ex-factory level for D&A has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

G.1.3.12 Normal Value and Export Price of non-cooperating producers/exporters from Korea RP

- *Normal Value*

129. The Authority has, therefore, constructed the normal value for all non-cooperative producers/exporters from Korea RP on the basis of data of cooperating producers from Korea RP. The constructed normal value so determined for producers/exporters from Korea RP is stated in the below – mentioned dumping margin table.

- *Export price*

130. The Authority has determined the export price for non-cooperating producers/exporters from Korea RP on the basis of cooperating producers of Korea RP. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission, and bank charges. The export price so determined is stated in the below – mentioned dumping margin table.

H DETERMINATION OF DUMPING AND DUMPING MARGINS

131. Considering the normal value and export price for the subject goods, the dumping margins are as follows:

DUMPING MARGIN TABLE – HYDRAULIC ROCK BREAKER						
SN	Producer	Normal Value (USD/MT)	Net Export Price (USD/MT)	Dumping Margin (USD/MT)	Dumping Margin (%)	Dumping Margin Range
Korea RP						
1.	DAEMO Engineering Co. Ltd.	***	***	***	***	10-20
2.	Soosan Heavy Industries Co., Ltd.	***	***	(***)	(***)	<i>de minimis</i>
3.	FEEL INDUSTRIAL ENGINEERING	***	***	***	***	0-10

DUMPING MARGIN TABLE – HYDRAULIC ROCK BREAKER						
SN	Producer	Normal Value (USD/MT)	Net Export Price (USD/MT)	Dumping Margin (USD/MT)	Dumping Margin (%)	Dumping Margin Range
	CO. LTD.					
4.	Hyundai Everdigm Corporation	***	***	***	***	10-20
5.	D and A Heavy Industries Co., Ltd.	***	***	(***)	(***)	<i>de minimis</i>
6.	Any producer	***	***	***	***	50-60
China PR						
1.	NINGBO YINZHOU GET MACHINERY LTD.	***	***	***	***	20-30
2.	Yantai Eddie Precision Machinery Co., Ltd	***	***	***	***	130-140
3.	Any producer	***	***	***	***	170-180

DUMPING MARGIN TABLE – CHISEL						
SN	Producer	Normal Value (USD/MT)	Net Export Price (USD/MT)	Dumping Margin (USD/MT)	Dumping Margin (%)	Dumping Margin Range
Korea RP						
1.	Soosan Heavy Industries Co., Ltd.	***	***	(***)	(***)	<i>de minimis</i>
2.	HANSUNG SPECIAL MACHINERY CO., LTD.	***	***	***	***	10-20
3.	Any producer	***	***	***	***	10-20
China PR						

DUMPING MARGIN TABLE – CHISEL						
SN	Producer	Normal Value (USD/MT)	Net Export Price (USD/MT)	Dumping Margin (USD/MT)	Dumping Margin (%)	Dumping Margin Range
1.	Ningbo Yinzhou Get Machinery Ltd.	***	***	***	***	10-20
2.	Any producer	***	***	***	***	20-30

I METHODOLOGY OF INJURY ASSESSMENT AND EXAMINATION OF CAUSAL LINK**I.1 General Miscellaneous Submissions*****I.1.1 Submissions of the domestic industry***

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

- a. A literal reading of the initiation notification makes it abundantly clear that assemblies/sub-assemblies were included within the scope of the present investigation. Paragraph (ii) of Annexure-8 clearly states that import data has been segregated considering rock breaker, rock breaker assemblies/sub-assemblies and parts. Thus, assemblies and sub-assemblies have been included in the import data and domestic industry's parameters since the inception of the investigation.³⁷
- b. Certain interested parties have requested the Authority to carry out separate injury analysis for each sub-assemblies and assemblies. This position is not supported by the past practice³⁸ of the Authority. Assemblies/sub-assemblies of rock breakers are not a separate product but rather a different form of the product. It is submitted that the objective behind including assemblies/sub-assemblies in the initiation notification was to ensure that exporter producers do not shift trade patterns and circumvent duties once levied. Therefore, separate analysis of injury for sub-assemblies and assemblies is not warranted.³⁹
- c. Further, injury for rock breakers and chisels have already been analysed individually.⁴⁰
- d. The applicant has provided sufficient evidence on record to establish dumping, injury and causal link between the dumped imports and injury to the applicant. The applicant requests the Authority to objectively examine the facts and evidence on record and recommend the imposition of duties.⁴¹
- e. Even if certain parameters do not reflect a deteriorating state, the same cannot be the sole ground to conclude that the domestic industry is not suffering from injury.⁴² The same has

³⁷ Para 54 of DOZCO's Written Submissions.

³⁸ *Sunset Review of anti-dumping duty imposed on the imports of Synchronous Digital Hierarchy Transmission Equipment originating in or exported from China PR and Israel; Anti-Dumping Investigations concerning import of Compact Fluorescent Lamps originating in or exported from China PR, Sri Lanka and Vietnam; Anti-dumping investigation concerning imports of "Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators; Solar cells weather or not assembled partially or fully in Modules from China PR, Chinese Taipei & USA (as cited by DOZCO in its Written Submissions).*

³⁹ Para 58 of DOZCO's Written Submissions.

⁴⁰ Para 47 of DOZCO's Rejoinder Submissions.

⁴¹ Para 46 of DOZCO's Rejoinder Submissions.

⁴² Para 57 of DOZCO's Rejoinder Submissions.

been upheld by the Hon'ble CESTAT in *Reliance Industries v. Designated Authority*. While assessing injury, the Authority is required to analyse and assess all domestic industry parameters and not isolate a single parameter.⁴³

1.1.2 Submissions of the other interested parties

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

- a. As per the applicant's import data segregation methodology⁴⁴ 'rock breaker parts' were not included in the product scope. Therefore, the applicant's claim that assemblies/sub-assemblies have been included in the product scope is baseless.⁴⁵
- b. The import data provided by the domestic industry is not reliable.⁴⁶ The subject goods are imported in Pcs/Nos. However, the domestic industry has mentioned the data in MT. The domestic industry has not even mentioned that at least 50% of the import transactions had weight as the defined unit of measurement in the computation of data.⁴⁷
- c. The domestic industry has not even defined the methodology used for the conversion of Pcs/Nos into MT. The usage of a non-defined conversion methodology could inflate the import volume and distort the import price. The Authority should not use the import data relied upon by the domestic industry.⁴⁸
- d. The Authority must carry out the injury analysis separately for hydraulic rock breaker, chisel and assemblies/sub-assemblies. The domestic industry has shared data only at the stage of final product i.e. hydraulic rock breaker and chisel and thus, data presented by

⁴³ Para 58 of DOZCO's Rejoinder Submissions.

⁴⁴ Annexure 8 of DOZCO's application: "The methodology is extracted below:

"Following methodology has been used for segregation of import data:

(i) Petitioner has sought import data of PUC by examining the description of each line item given in the HS Code classification for the subheadings 84314930 and 84314990.

(ii) PUC has been identified on the basis of its name and its description, i.e. rock breaker, rock breaker parts and chisel.

(iii) Product description such as hydraulic rock breaker, JSB 50S, Atlas hydraulic breaker and Breaker HM 380 are considered as rock breaker.

(iv) Product description such as mounting pin, thorough bolt assembly, collar bush or the product defined as hydraulic breaker spare parts are considered as rock breaker and parts ('RB Parts').

(v) All import transactions are in kgs, MT, pieces, and numbers. All items are converted based on the standard weights of the equipment into common units such as kgs and MT"

⁴⁵ Para 59 of Eddie's Written Submissions.

⁴⁶ Page 10 of DAEMO's Written Submissions; Page 14 of Ningbo's Written Submissions.

⁴⁷ Page 11 of DAEMO's Written Submissions; Page 10 of FEEL's Written Submissions; Page 14 of Ningbo's Written Submissions.

⁴⁸ Page 10 of DAEMO's Written Submissions; Page 14 of FEEL's Written Submissions; Page 14 of Soosan's Written Submissions; Page 9 of FEEL's Rejoinder Submissions; Page 14 of Ningbo's Written Submissions; Page 9 of Ningbo's Rejoinder Submissions.

them lacks objectivity.⁴⁹

- e. Fully assembled rock breakers are different products compared to their assemblies and sub-assemblies in terms of end-use and prices. The assemblies and sub-assemblies are manufactured separately and then used for assembling hydraulic rock breakers and therefore, the Authority should conduct a separate dumping and injury examination for assemblies and sub-assemblies.⁵⁰ The Authority is required to adhere to the principle of fair comparison enshrined in Art. 2.4 of the Agreement on Anti-dumping, which is equally applicable to the calculation of injury margin.⁵¹
- f. Assemblies/sub-assemblies are not part of the PUC and therefore, injury examination should be restricted to alloy steel chisels and rock breakers.⁵²
- g. The applicant needs to provide information pertaining to import of assemblies/ sub-assemblies in its application. Thus, Eddie cannot comment on whether the applicant is suffering injury because the product scope was enlarged at later stages of the investigation.⁵³ DOZCO has not provided an updated application till the stage of the oral hearing, taking into account the enlarged scope of the PUC.⁵⁴
- h. The Panel in *EC - Norway*⁵⁵ has observed that grouping multiple products into a single PUC has severe repercussions throughout the investigation, complicating the task of collection and evaluation of data complex. The Authority is, therefore, requested to follow its past practice in *Rubber Chemicals*⁵⁶ and *Penicillin-G Potassium*⁵⁷ and examine injury of the assemblies and sub-assemblies separately.⁵⁸
- i. The applicant has imported the PUC (assemblies, sub-assemblies) and other parts of the rock breakers (not covered under PUC) in substantial quantities from the subject countries. Thus, injury, if any, is self-inflicted.⁵⁹

⁴⁹ Page 25 of Everdigm's Written Submissions; Page 25 of D&A's Written Submissions.

⁵⁰ Page 2 of Everdigm's Rejoinder Submissions; Page 24-25 of D&A's Rejoinder Submissions; Paras 64-65 of Eddie's Rejoinder Submissions.

⁵¹ Para 63 of Eddie's Rejoinder Submissions.

⁵² Para 62 of Eddie's Rejoinder Submissions.

⁵³ Paras 83-83 of Eddie's Written Submissions.

⁵⁴ Para 83 of Eddie's Written Submissions.

⁵⁵ Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, [WT/DS337/R](#), adopted 15 January 2008.

⁵⁶ *Anti-Dumping investigation concerning the imports of Rubber Chemicals viz. MBT, CBS, TDQ, PVI, and TMT from China and PX-13 (6PPD) from China and Korea RP.*

⁵⁷ *Anti-Dumping investigation involving imports of Penicillin-G Potassium originating in or exported from China PR and Mexico and 6-APA originating in or exported from China PR.*

⁵⁸ Page 25 of Everdigm's Rejoinder Submissions; Page 25 of D&A's Rejoinder Submissions.

⁵⁹ Paras 46-47 of Eddie's submissions; Paras 60-61 of Eddie's Rejoinder Submissions.

- j. There is no alternative to the PUC.⁶⁰
- k. Further, the PUC is used in rock breaking, and therefore, there is high wear and tear for these items. These items require frequent replacement, and hence, any increase in cost would adversely impact the end user.⁶¹
- l. Each manufacturer specifically designs the tools⁶² and parts used in the PUC. Every supplier or manufacturer has its own design and specifications that may or may not fit into rock breakers designed by other manufacturers. Forcing manufacturers to use parts manufactured by other manufacturers will cause damage to the original equipment and may make warranties offered by OEM manufacturers ineffective and void.⁶³
- m. Further, each chisel is custom-made as per the specifications and design of the rock breaker, and therefore, the same cannot be mass-produced. Each chisel is customised as per the specification of the rock breaker, which implies that compatibility of the rock breaker with the chisel is a major point of consideration which influences the buying decision.⁶⁴
- n. Aftersales support provided after selling the subject goods is also a major factor which influences the buying decision of an end user. Quality of the product, reliability and specifications are other important considerations which guide the purchase of the PUC.⁶⁵
- o. During the oral hearing, DOZCO accepted that it had provided incorrect information regarding indexes, which has affected Eddie's ability to comment on injury.⁶⁶
- p. There is no material injury to the applicant on account of imports of the subject goods from Korea RP.⁶⁷ The alleged claims of material injury are not based on any positive evidence.⁶⁸
- q. Producers/exporters do not maintain weight-wise data of parts and components sold by them, and hence, information cannot be provided in the assigned unit of measurement.⁶⁹
- r. The Authority should not consider the letters of support filed as Exhibit -3 by the applicant as these are in violation of Trade Notice No.13/2018 dated 27th September 2018 and Trade Notice No. 14/2018 dated 1st October 2018, wherein a supporter is required to file

⁶⁰ Para E.3 of FYN and FINE's written submissions

⁶¹ Para E.3 of FYN and FINE's written submissions

⁶² The word tool herein should not be confused to the market parlance synonym for chisel.

⁶³ Para E.4 of FYN and FINE's written submissions.

⁶⁴ Para E.6 of FYN and FINE's written submissions

⁶⁵ Paras E.7-E.8 of FYN and FINE's written submissions.

⁶⁶ Para 84 of Eddie's Written Submissions.

⁶⁷ Page 24 of Everdigm's Written Submissions.

⁶⁸ Page 35 of Everdigm's Written Submissions.

⁶⁹ Page 14 of FEEL's Written Submissions; Page 14 of Ningbo's Written Submissions.

a complete response in the formats prescribed by the Authority at the pre-initiation stage.⁷⁰

1.1.3 Examination by the Authority

134. The following issues have been raised by the domestic industry and the other interested parties as part of their submissions:

1. Whether assemblies and sub-assemblies were included in the scope of the PUC and consequently in the import data?
2. Whether imports transactions reported in pcs/nos as unit were appropriately converted into MT?
3. Whether injury examination for assemblies and sub-assemblies be carried out separately?
4. Whether the applicant is suffering from self-inflicted injury?

1.1.3.1 Assemblies and sub-assemblies form part of the scope of the PUC

135. Eddie has submitted that the import methodology, as mentioned by DOZCO in the application, did not specify that rock breaker parts were included within the scope of the PUC. It is noted that a rock breaker consists of several assemblies, sub-assemblies, and multiple small joining components that bring together the assemblies and sub-assemblies to form the fully assembled rock breaker. The investigation intended to cover only assemblies and sub-assemblies which were considered to be part of the PUC as was clear from the notice of initiation as well as guidance provided through the Scope Notification. Through the Scope Notification, the scope of such assemblies/sub-assemblies was restricted to the seven assemblies mentioned in the Scope Notification. The applicant has merely stated in its methodology that rock breaker parts were excluded from the purview of the PUC. It is noted that these parts have not been included within the scope of the PUC in the initiation notification as well as through the subsequent Scope Notification. Thus, assemblies and sub-assemblies have been included within the purview of the investigation since the inception of the investigation to the extent mentioned in the Scope Notification⁷¹.

1.1.3.2 Conversion of volumes reported in PCS/NOS in MT

136. DAEMO, FEEL, Soosan and Ningbo have contested the import data submitted by the applicant. They have further claimed that the applicant needs to explain how transactions

⁷⁰ Page 11 of DAEMO's Written Submissions; Page 11 of FEEL's Rejoinder Submissions.

⁷¹ Notification, [Scope of The Product Under Consideration and Product Control Numbers](#), dated 16th June 2023.

in which PCS⁷² and UNTS⁷³ have been mentioned have been converted into weight terms. It is clarified that the volume and value of the subject goods have been ascertained based on DG systems data and the export data provided in MT by the participating exporters. With respect to the transactions in which volumes were not reported in MT, the investigation team issued supplementary questionnaires to the participating producers to clarify or rectify any deficiencies and/or inconsistencies in their information. The responses filed by the parties to the supplementary questionnaires have been taken into account to arrive at the final volume of the subject goods.

I.1.3.3 Separate injury examination for assemblies and sub-assemblies

137. Eddie has argued that the application did not contain information pertaining to imports of assemblies and sub-assemblies. Eddie has further commented that due to the lack of this information, it has not been able to comment whether the applicant is suffering injury due to the enlarged product scope. Further, Everdigm and D&A have argued that assemblies and sub-assemblies have different end uses and are manufactured separately; therefore, the Authority should carry out a separate examination for assemblies and sub-assemblies. Eddie has requested the Authority to restrict the injury examination to fully assembled rock breakers and chisels. Opposed to this, DOZCO has relied on the past practice of this Authority to contend that separate examination of assemblies and sub-assemblies is not warranted. DOZCO has also stated that assemblies and sub-assemblies are only a form in which rock breakers are imported.
138. As stated earlier in Section C above and the foregoing paras, the application, as well as the initiation notification, made it amply clear that assemblies/sub-assemblies were part of the PUC. DOZCO manufactures all the assemblies and sub-assemblies of rock breakers. Guidance was further provided through the Scope Notification. The submissions of Eddie are thus unsubstantiated.
139. It is further noted that rock breaker assemblies and sub-assemblies are imported in such condition primarily for assembly and sale as fully assembled rock breakers. Such assemblies and sub-assemblies do not have any other independent use, nor has this been claimed by any of the participating exporters. Therefore, the end application of such goods and not only the form in which such imports enter the country also matters in the market.
140. Further, the process of assembling rock breakers involves minimal set-up. During its visit to the applicant's factory, the investigating team asked the applicant to demonstrate the

⁷² Pieces (PCS), Units (UNTS).

⁷³ *Id.*

process of creating and disassembling rock breakers. While low-weight breakers could be assembled with minimal manpower, in the case of high-weight rock breakers, only a lifting machine is required to put the assembled parts in an upright position, and the rest of the process is carried out using manpower.

141. It is noted that DOZCO has been primarily catering to users who request fully assembled rock breakers. However, it would be imprudent to conclude that upon specific request, DOZCO would not be capable of supplying other customers who may request rock breakers in sub-assembled form.
142. D&A and Everdigm have relied on *EC – Salmon (Norway)* to contend that injury in respect of assemblies and sub-assemblies be assessed separately. The Panel had observed:

“7.58 Essentially, Norway's argument raises an issue of policy, suggesting that the absence of limits on the scope of the product under consideration might result in erroneous dumping determinations by investigating authorities. Norway argues that, if products that are not "like" are treated as the product under consideration in a single investigation, a dumping determination cannot reveal whether some or all of those products are dumped.²³⁷ Norway gives, as an example, in investigation in which cars and bicycles are treated as one product under investigation.²³⁸ We are not persuaded by Norway's extreme example. Any grouping of products into a single product under consideration will have repercussions throughout the investigation, and the broader such a grouping is, the more serious those repercussions might be, complicating the investigating authority's task of collecting and evaluating relevant information and making determinations consistent with the AD Agreement. Thus, it seems to us that the possibility of an erroneous determination of dumping based on an overly broad product under consideration is remote. That possibility is certainly not enough to persuade us to read obligations into the AD Agreement for which we can find no basis in the text of the Agreement.

7.59 Moreover, Norway's position would result in the absurd situation of requiring fragmentation of the product under consideration, and a consequent fragmentation of the like product, and ultimately the domestic industry, which would render the possibility of imposing dumping duties consistent with the AD Agreement a nullity. We see nothing in Article 2.6, which as discussed, defines "like product", which would support this view. In this regard, it is noteworthy that, while the AD Agreement specifically defines "like product" by requiring a comparison between domestically produced (or foreign) goods and the imported products that are the subject of the investigation, there is no specific definition of "product under consideration".²³⁹ In our view, the very fact that there is a definition of like product in the AD Agreement indicates that Members were well able to define terms carefully and precisely when considered necessary. The

*absence of a definition of product under consideration indicates that no effort was undertaken in that regard. In our view, this consideration supports the conclusion that it would be absurd to impose the definition of like product from Article 2.6 onto the undefined term product under consideration. We simply see no basis in the text of Articles 2.1 and 2.6 for the obligations Norway seeks to impose on investigating authorities with respect to product under consideration.*⁷⁴ (emphasis supplied)

143. The Authority disagrees with this selective interpretation forwarded by D&A as it would lead to unnecessary fragmentation of the product under consideration. It is noted that the WTO Panel in *EC – Salmon (Norway)* wanted to avoid such fragmentation which has been proposed by D&A and Everdigm. Given that assemblies/sub-assemblies are imported to form fully assembled rock breakers and compete in the same market as fully assembled rock breakers, it is noted that such fragmentation is not warranted.

1.1.3.4 Self-inflicted injury

144. Eddie has contended that the applicant has imported significant volumes of rock breaker and other parts of rock breaker from the subject countries and, therefore, injury to the applicant is self-inflicted. Eddie has also provided the volume and value of the alleged imports made by the applicant. The investigation team has verified this claim using the DG systems data and the applicant's records. It is noted that the applicant has not imported fully assembled rock breakers from the subject countries. However, the applicant has imported other parts of rock breakers which are not covered by the scope of the PUC. These amount to around [***] MT. The assemblies/sub-assemblies which have been covered within the present investigation and which have been imported by the applicant amount to [***] MT. These constitute around 1% of total demand. The applicant has explained that while around [***] MT has been imported for R&D, the rest of the volumes have been necessitated due to competition from low-priced cheap assemblies/sub-assemblies which forces them to import the same.
145. It is noted that the mere act of importation cannot lead to a conclusion of self-inflicted injury, as stated in the foregoing paras in the section pertaining to domestic industry's standing. The volume and value of such imports are insignificant as compared to the demand for the subject goods as well as the production and sales of the applicant. The Authority, therefore, does not consider that the applicant is suffering from self-inflicted injury.

⁷⁴ Paras 7.58-7.59, Report of the Panel, *EC-Norway*, [WT/DS337/R](#).

I.1.3.5 Other issues

146. DOZCO accepted that indexation in the non-confidential version of the application had been carried out incorrectly. DOZCO subsequently revised the application prior to rejoinder submissions and circulated it along with its written submissions to the other interested parties. In view of the same, the Authority disagrees with Eddie's concerns regarding its inability to comment on injury.
147. DAEMO and FEEL have requested the Authority not to consider the letters of support filed by the applicant. The Authority notes that the applicant is the sole domestic producer, in terms of Rule 2(b) of the AD Rules, of the subject goods and, therefore, constitutes 100% of total eligible domestic production. The Authority has not considered the letters of support either in establishing the applicant's status as an eligible domestic industry or in injury examination.

I.2 Cumulative Analysis***I.2.1 Submissions by the domestic industry***

148. The following submissions have been made by the domestic industry:
- a. The Authority should cumulatively assess injury as all requirements of Art. 3.3 of the Anti-dumping Agreement have been met.⁷⁵ The import volumes as well as dumping margin from each of the subject countries is above the *de-minimis* level. As regards the existence of the conditions of competition, DOZCO relies on the WTO Panel Report in *China – AD on Stainless Steel (Japan)*⁷⁶ wherein the panel had considered the increase in the volume of goods from a specific country as evidence of such goods being in competition with domestic goods.⁷⁷
 - b. There is nothing in the Anti-dumping Agreement which suggests for non-cumulation when conditions for cumulation have been fulfilled.⁷⁸ Certain interested parties have solely focused on imports from Korea to determine the injurious effects of imports. Such isolation of the impact of the subject goods from Korea RP are attempts to misdirect the Authority.⁷⁹ As enunciated by the WTO Panel in *EC – Cast Iron Tube*⁸⁰ country-specific

⁷⁵ Paras 42, 44 of DOZCO's Written Submissions; Paras 49-50,62 of DOZCO's Rejoinder Submissions.

⁷⁶ Report of the Panel, *China – Anti-Dumping measures on Stainless Steel Products from Japan*, [WT/DS601/R](#).

⁷⁷ *Id.* at para 7.91.

⁷⁸ Para 48 of DOZCO's Rejoinder Submissions; Para 54 of DOZCO's Rejoinder Submissions.

⁷⁹ Para 51 of DOZCO's Rejoinder Submissions.

⁸⁰ Report of the Panel, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, [WT/DS219/R](#).

analysis is not a pre-requisite for cumulative assessment.⁸¹ The same has been upheld by the Hon'ble CESTAT in *Acrylic Fibre Manufacturers v. Designated Authority*.

- c. In the present investigation, there is a sudden spike in the quantum of imports from China PR and Korea RP. Thus, the dumped subject goods and the domestically produced goods are in competition with each other.⁸²

1.2.2 Submissions by the other interested parties

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

- a. The subject goods (rock breaker as well as chisel) from China PR and Korea RP are differently priced. The difference in the landed value of imports from China PR as well as Korea RP is significant. While the volume of imports from China PR has increased and the landed value has fallen, the volume of imports of the subject goods from Korea RP has declined, and further, the landed value is almost three times that of China PR.⁸³ Thus, competition essentially exists between imports of China PR and goods manufactured by Indian industry,⁸⁴ and therefore, injury cannot be attributed to imports from Korea RP.⁸⁵

⁸¹ The Panel observed as follows:

"7.233 Article 3.3 provides for cumulative assessment of the effects of the dumped imports of a product from different sources and explicitly identifies the criteria that must be fulfilled in order to do so. Under this provision, an investigating authority may proceed to a cumulative analysis only if: 1. Dumping margins for each individual country are more than de minimis; 2. the volume of imports from each country is not negligible; and 3. a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product. ...

7.234... We disagree. Article 3.3 indeed contains a condition requiring attention to the "volume" of imports. The obligatory condition contained in Article 3.3 with respect to the volume of imports from individual countries is that the volume of such imports must not be negligible. Thus, an investigating authority may not cumulate imports that are individually found to be of negligible volume (and, indeed, the provisions of Article 5.8 concerning termination would presumably apply). This is the only explicit reference to "volume" in the text of Article 3.3. We find no other express references relating to volume in Article 3.3 and decline to read into the treaty text terms that are not there. In particular, the text of this provision contains no additional requirement that authorities shall also consider whether there has been a significant increase in imports country-by-country before progressing to a cumulative assessment. Indeed, such a requirement would undermine the very concept of a cumulative analysis. We therefore consider that there are no other, additional, mandatory obligations relating to the assessment of import volumes in Article 3.3 flowing from the text of the provision.

7.235 We find contextual support for our view that, contrary to Brazil's argument, an Article 3.2 analysis of individual countries' volume and price is not necessary as a pre-condition for cumulation in other provisions of Article 3, and that the "effects" that may be considered cumulatively post cumulation include the volume and price effects referred to in Article 3.2."

⁸² Para 43 of DOZCO's written Submissions.

⁸³ Page 44 of Everdigm's Written Submissions; Page 20 of D&A's Rejoinder Submissions.

⁸⁴ Page 20 of Everdigm's Rejoinder Submissions.

⁸⁵ Page 23 of Everdigm's Rejoinder Submissions.

1.2.3 Examination by the Authority

150. Para (iii) of Annexure – II to the AD Rules, 1995 states that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that: a) the margin of dumping established in relation to the imports from each country is more than two percent expressed as a percentage of export price, and the volume of the imports from each country is three percent (or more) of the import of like article or where the imports from individual countries are less than three percent, the imports collectively account for more than seven percent of the import of like article, and b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

151. The following issue has been raised by the domestic industry and the other interested parties as part of their submissions:

1.2.3.1 Whether in view of the difference in landed value of the subject goods from Korea RP and China PR conditions of competition exist between the subject goods from the subject countries?

152. D&A and Everdigm have contended that there is no competition between the subject goods imported from Korea RP and China PR. D&A and Everdigm argue that there is significant price difference between the subject goods imported from the two subject countries. They have further emphasised that while the volume of subject imports from China PR has increased, the volume has declined for Korea RP. Similarly, they have argued that the landed value for China PR has declined while for Korea RP, it has increased. DOZCO has stated that the volume of subject imports from the subject countries is above the *de-minimis* level and the imports of subject goods from both the subject countries are in competition with each other. It has further stated that the volume of subject goods from the subject countries has increased and therefore, the dumped goods and domestically produced goods are in competition with each other. DOZCO has relied on *EC – Cast Iron Tube*⁸⁶ to argue that country-specific analysis is not a pre-requisite for cumulative analysis.

153. It is noted that D&A and Everdigm have not claimed that the subject goods imported from Korea RP are not in competition with the goods produced by the domestic industry.

154. It is noted that the subject goods imported from China PR and Korea RP are like article to

⁸⁶ Report of the Panel, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, [WT/DS219/R](#).

the goods manufactured by the domestic industry. They have the same end use and, are manufactured through similar production processes using the same raw materials, and have been procured by similar sets of consumers. D&A and Everdigm have primarily contended the change in volume and price of the subject goods from the two countries to argue that the subject goods from the two subject countries do not compete in the market. Even if D&A and Everdigm's argument is accepted at face value without taking into consideration the actual volume of imports, it is noted that the rise and fall in volumes and prices of the subject goods establishes that the subject goods from the two countries compete in the market. If there was no competition between the subject goods from Korea RP and China PR, the imports from Korea RP would be able to maintain their levels and increase their share with growth in consumption, unaffected by the rise in imports from China PR.

155. Further, the WTO Panel in *EC – Cast Iron Tube* has observed:

“7.234 In particular, the text of this provision *contains no additional requirement that authorities shall also consider whether there has been a significant increase in imports country-by-country before progressing to a cumulative assessment*. Indeed, such a requirement would undermine the very concept of a cumulative analysis. We therefore consider that there are no other, additional, mandatory obligations relating to the assessment of import volumes in Article 3.3 flowing from the text of the provision.

7.235 We find contextual support for our view that, contrary to Brazil's argument, *an Article 3.2 analysis of individual countries' volume and price is not necessary as a pre-condition for cumulation in other provisions of Article 3, and that the “effects” that may be considered cumulatively* post cumulation include the volume and price effects referred to in Article 3.2.”⁸⁷ (emphasis supplied)

156. In view of the above, the Authority, therefore, disagrees with D&A and Everdigm's contentions. Accordingly, the Authority has cumulatively assessed the imports from China PR and Korea RP.

⁸⁷ Paras 7.234-235, Report of the Panel, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, [WT/DS219/R](#).

J SECTION: ROCK BREAKER**J.1 Volume effect of dumped imports*****J.1.1 Submissions by the domestic industry***

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

- a. There has been a significant increase in imports of rock breakers in absolute terms from the subject countries. While imports from China have increased by 802% compared to the base year, imports from Korea have remained at substantial levels.⁸⁸
- b. The share of other countries has remained abysmal.⁸⁹

J.1.2 Submissions by the other interested parties

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

- a. The examination regarding relative and absolute increase in dumped imports cannot be carried out if the unit of measurement adopted for imports is in MT.⁹⁰
- b. The increase in imports is also attributable to the applicant, which has made a significant quantity of imports of the PUC.⁹¹
- c. The applicant has alleged that its performance has declined with the increased volume of subject imports (rock breakers). However, as per the information provided in the application, the volume of subject imports from Korea RP has come down by 15%. Import volume from Korea RP has declined significantly in absolute as well as relative terms.⁹² Thus, imports from Korea RP have not caused injury to the domestic industry.⁹³
- d. The share of imports from Korea has declined in relation to total Indian production, total Indian demand as well as total imports of the PUC.⁹⁴ The share of import volumes of subject goods from Korea RP has declined to 65% of total imports of the PUC as compared to the base year.⁹⁵

⁸⁸ Para 45 of DOZCO's Written Submissions.

⁸⁹ Para 46 of DOZCO's Written Submissions.

⁹⁰ Page 10 of DAEMO's Written Submissions; Page 10 of FEEL's Rejoinder Submissions; Page 10 of Ningbo's Rejoinder Submissions.

⁹¹ Para 48 of Eddie's Rejoinder Submissions.

⁹² Page 25 of Everdigm's Written Submissions; Page 25 of D&A's Written Submissions.

⁹³ Page 15 of Soosan's Written Submissions; Page 15 of DAEMO's Written Submissions; Page 15 of FEEL's Written Submissions.

⁹⁴ Page 27 of Everdigm's Written Submissions; Page 27 of D&A's Written Submissions.

⁹⁵ Page 19 of Everdigm's Rejoinder Submissions; Page 20 of D&A's Rejoinder Submissions.

- e. The volume of imports from China PR has increased significantly⁹⁶ by approximately nine times as compared to the base year, and therefore, the injury to the domestic industry may be a consequence of imports from China PR.⁹⁷
- f. In paragraph 47 of the applicant's written submissions, the applicant has presented sales of other domestic producers. This is contrary to the arguments presented by the applicant throughout the investigation, in which it has maintained that there are no other Indian producers, a fact which has been contested by the other interested parties. The application should, therefore be rejected and the investigation terminated⁹⁸ as the applicant has concealed this fact and has misled the Authority.⁹⁹

J.1.3 Examination by the Authority

159. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in the volume of dumped imports, either in absolute terms or relative to production or consumption in India. As stated above, the investigating team has arrived at the final volumes based on DG Systems data coupled with the export information provided by the participating producers.
160. The distribution of various sources of supply of the PUC in demand is as follows:

Table 1: Volume Parameters (Fully Assembled)							
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)
1	Domestic Sales – Applicant	MT	***	***	***	***	
	Trend	Index	100	84	172	115	
2	Domestic Sales - Other Producers	MT	-	-	-	-	
	Trend	Index	-	-	-	-	
3	Subject Countries	MT	2,279	5,124	3,181	5,862	***100
	Trend	Index	100	225	140	257	

⁹⁶ Page 25 of Everdigm's Written Submissions; Page 20 of Everdigm's Rejoinder Submissions.

⁹⁷ Page 15 of Soosan's Written Submissions; Page 15 of DAEMO's Written Submissions; Page 15 of FEEL's Written Submissions.

⁹⁸ Para 51 of Eddie's Rejoinder Submissions.

⁹⁹ Para 51 of Eddie's Rejoinder Submissions.

¹⁰⁰ Confidential as there are only two exporters with *de-minimis* margin. Revelation of this figure would lead to disclosure of import volume of the exporters to each other.

Table 1: Volume Parameters (Fully Assembled)								
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)	
4	Subject Countries - Non-dumped Imports	MT	Not determined					***101
5	Other Countries – Imports	MT	43	27	105	95		
	Trend	Index	100	62	243	220		
6	Total imports	MT	2,322	5,150	3,286	5,957		
	Trend	Index	100	222	142	257		
7	Total Demand	MT	***	***	***	***		
	Trend	Index	100	197	147	231		
Subject Imports in relation to								
8	Indian Production	%	***	***	***	***	***102	
	Range	%	350-400	1050-1100	350-400	850-900	650-700	
9	Total Demand	%	***	***	***	***	***103	
	Range	%	80-90	90-100	70-80	90-100	60-70	
10	Total Imports	%	98	99	97	98	***104	

161. From the above, it is noted that the imports (fully assembled rock breakers) from the subject countries have increased from 2,279 MT in the base year to 5,862 MT in the POI, i.e. an increase of 3,583 MT. The demand for the subject goods has also increased throughout the injury period, including the POI, except in 2020-21, wherein the demand dipped as compared to 2019-20 levels. However, it remained above the base year level. In 2020-21, imports from the subject countries declined significantly by almost 1943 MT, whereas the domestic industry's sales doubled. Thus, there was an increase in the sales of the applicant with a decline in the volume of subject goods from the subject countries. However, the volume of subject imports from the subject countries increased significantly during POI. Out of 5,862 MT, ***¹⁰⁵ MT was found to be dumped. During the POI, the domestic industry's sales declined by ***% despite an increase of ***% in demand as compared to 2020-21. Further, the volume of dumped imports in the POI constitutes ***% of the growth in demand (as compared to 2020-21) and ***% of the total demand in the POI. Thus, dumped imports from the subject countries have not only captured the entire growth in demand but

¹⁰¹ *Id.*

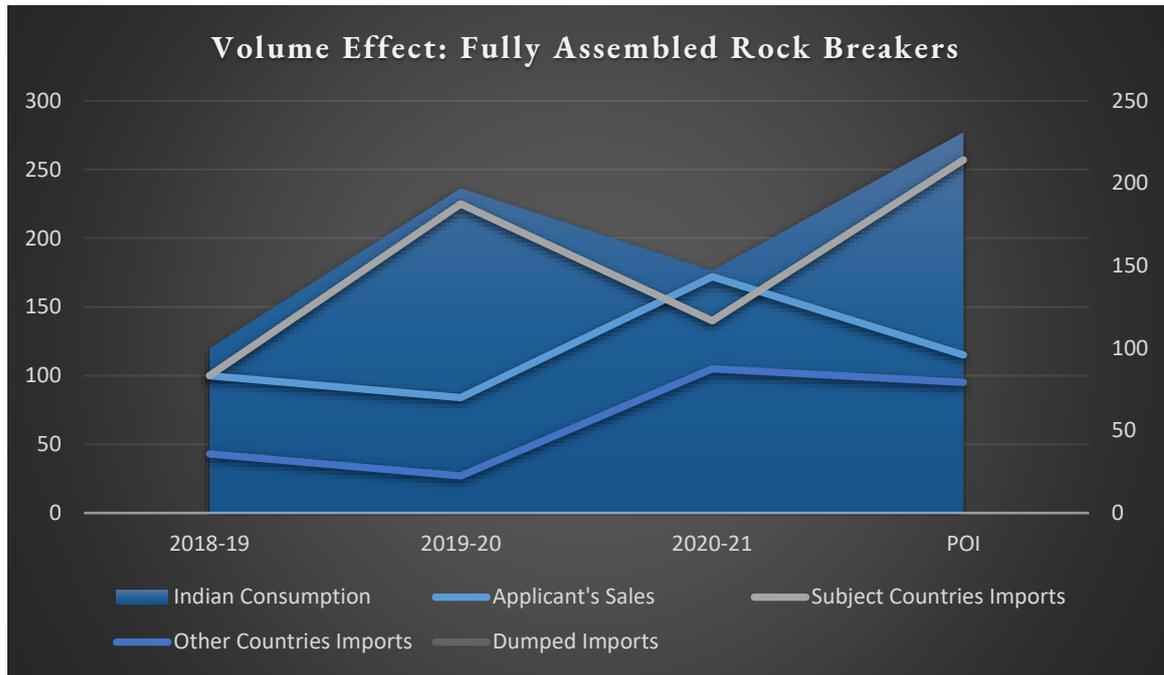
¹⁰² Number has been kept confidential as it pertains to a single exporter.

¹⁰³ Number has been kept confidential as it pertains to a single exporter.

¹⁰⁴ *Id.*

¹⁰⁵ Figure kept confidential to maintain intra-party confidentiality.

also adversely impacted the sales of the domestic industry.



162. As regards the relative increase in dumped imports from the subject countries, it is noted that as compared to the base year, subject imports from the subject countries in relation to Indian production have increased by almost 479 %. The imports of subject goods from the subject countries are at *** % in relation to Indian production in the POI and constitute 98 % of the total imports into India in the POI. With regards to the increase in the volume of subject imports from the subject countries in relation to Indian demand, the share of subject imports from the subject countries has increased from *** % in the base year to *** % in the POI. The share of subject imports from the subject countries in total demand as well as in relation to Indian production and demand had declined in 2020-21. However, the same has increased in the POI. Out of the *** % imports from the subject countries in the POI, almost *** % volume pertains to dumped imports. Thus, imports have increased in absolute as well as relative terms in the POI and a significant quantity has been found to have entered in the Indian market at dumped prices.

163. The following table represents the volume of rock breakers fully assembled along with assemblies and sub-assemblies:

Table 2: Volume Parameters-Fully Assembled and Assemblies/Sub-assemblies							
S.No.	Particulars	UoM	2018-20	2019-20	2020-21	POI	POI (Dumped Imports)
1	Domestic Sales – Applicant	MT	***	***	***	***	
	Trend	Index	100	84	172	115	

Table 2: Volume Parameters-Fully Assembled and Assemblies/Sub-assemblies								
S.No.	Particulars	UoM	2018-20	2019-20	2020-21	POI	POI (Dumped Imports)	
2	Domestic Sales - Other Producers	MT	-	-	-	-		
	Trend	Index	-	-	-	-		
3	Subject Countries	MT	2,617	5,968	4,048	9,670	***106	
	Trend	Index	100	222	141	259		
4	Subject Countries - Non-dumped Imports	MT	Not determined					***107
5	Other Countries – Imports	MT	61	177	190	191		
	Trend	Index	100	289	311	312		
6	Total imports	MT	2,679	6,144	4,238	9,861		
	Trend	Index	100	219	143	258		
7	Total Demand	MT	***	***	***	***		
	Trend	Index	100	195	148	232		
Subject Imports in relation to								
8	Indian Production	%	***	***	***	***	***108	
	Range	%	350-400	1050-1100	350-400	1250-1300	1200-1250	
9	Total Demand	%	***	***	***	***	***109	
	Range	%	80-90	90-100	70-80	90-100	70-80	
10	Total Imports	%	98	97	96	98	***110	

164. As mentioned above, volume and price effects have been undertaken on two levels for rock breakers – firstly, at the fully assembled level and secondly, for fully assembled plus assemblies and sub-assemblies’ level. Given the fact that the sub-assemblies and assemblies compete in the same market with fully assembled breakers, the Authority has carried out analysis at both levels to ascertain injury to the domestic industry.

165. It is noted that imports from the subject countries have increased from 2,617 MT in the base year to 9670 MT in the POI, whereas the applicant’s sales have increased merely by *** MT. Out of 9760 MT in the POI, *** MT has been found to have entered at dumped prices. Between the base year and the POI, demand has increased by *** MT. It is noted that demand has followed the same trend as in the case of fully assembled breakers. After

¹⁰⁶ Confidential as there are only two exporters with *de-minimis* margin. Revelation of this figure would lead to disclosure of import volume of the exporters to each other.

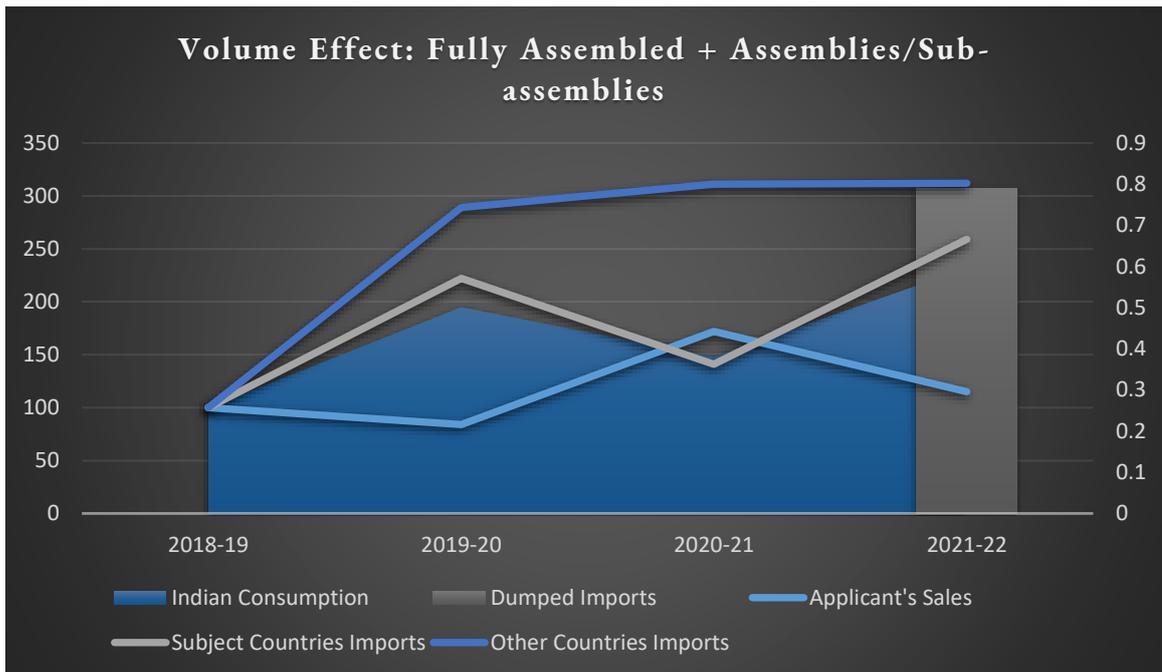
¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

increasing initially in 2019-20, demand declined in 2020-21 and subsequently increased further in the POI. Despite a significant increase in demand in 2019-20, the applicant's sales had declined whereas the volume of low-priced imports from the subject countries significantly increased. However, with a decline in the volume of imports from the subject countries in the succeeding year (2020-21), the applicant was able to increase its sales significantly. Nevertheless, with the influx of low-priced imports in the POI, applicant's sales declined significantly as compared to the previous year.



166. As regards the relative increase in subject imports, it is noted that subject imports from the subject countries have increased by almost 981 % in the POI in relation to Indian production as compared to the base year. Such imports have also increased by almost 152 % in relation to Indian production compared to 2019-20 and almost 962 % compared to 2020-21. The subject imports from the subject countries constituted *** % of the total Indian demand in the POI. Subject imports from the subject countries have also increased compared to 2020-21 and 2019-20. Thus, imports have increased in absolute as well as relative terms. Further, out of the 98% subject imports, *** % have been found to have entered at dumped prices.
167. Everdigm, Soosan, DAEMO and FEEL have contended that the absolute volume of imports from Korea RP has declined in absolute as well as relative terms. Everdigm has also argued that the import volume from China PR has increased by 9 times compared to the base year, and therefore, the injury is on account of China PR. DOZCO has argued that volumes of dumped imports from the subject countries have increased significantly in absolute as well as relative terms. As noted above, imports of fully assembled rock breakers from Korea RP and China PR in the POI have increased by 196% and 126%, respectively, as compared to

the base year. Further, as compared to 2020-21, imports from China PR and Korea RP in the POI have increased by 193% and 25%, respectively, in the POI.

168. Likewise, if the volume of assemblies and sub-assemblies are included, it is noted that imports from the subject countries have increased by 432% and 56% from China PR and Korea RP as compared to the base year and 117% and 8% as compared to 2019-2020. Thus, the volume of dumped imports from China PR and Korea RP has increased as compared to the injury period simultaneously, albeit in different proportions. The entire volume of subject imports from China PR have been found to enter into India at dumped prices in the POI, whereas almost *** % of imports from Korea RP has been found to enter into India at dumped prices. Thus, there has been an increase in the volume of subject imports from the subject countries in absolute and relative terms. Moreover, the quantum of dumped imports from Korea RP is above the *de-minimis* level in the POI. For these reasons, the Authority disagrees with the contention that injury is entirely attributable to China PR.
169. Notwithstanding the above, once this Authority arrives at the conclusion that the conditions for cumulation have been fulfilled, it is noted that the rise and fall in the volume of imports of individual subject countries does not impact the injury analysis, as the obligation to examine the impact of dumped imports is at the level of the subject countries and not individual subject countries.
170. Eddie has commented that the applicant's written submissions admit the existence of other domestic producers of the PUC. The Authority has perused the written submissions of the applicant, and it is noted that in the confidential version of the submissions, the sales of other domestic producers have been mentioned as zero. The Authority notes that DOZCO erred in its revised application. In view of this, Eddie's concerns stand addressed.

J.2 Volume effect of the dumped imports on the market share of the domestic Industry

J.2.1 Submissions by the domestic industry

171. The following submissions have been made by the domestic industry:
- a. The imports of rock breakers are 3 times the total Indian production. The demand for rock breakers has steadily increased. However, the domestic market has been entirely captured by low-priced imports.¹¹¹
 - b. The market share of the applicant has declined during the POI even though the demand for rock breakers has increased by 31% since the base year. The decline in the market share

¹¹¹ Para 47 of DOZCO's Written Submissions.

is due to the increase in the volume of low-priced imports¹¹².

J.2.2 Submissions by the other interested parties

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

- a. The domestic industry has claimed that despite an increase of 31% in demand compared to the base year, its market share has declined. The volume of imports from Korea RP has also declined in the POI compared to the base year, whereas imports from China have increased nine-fold.¹¹³ Thus, the loss of market share cannot be due to the import of subject goods from Korea RP.¹¹⁴

J.2.3 Examination by the Authority

173. The following table shows market share of the domestic industry and the subject countries for fully assembled rock breakers in the total Indian demand:

Table 3: Market Share - Fully Assembled								
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)	
1	Applicant's domestic sales	%	***	***	***	***		
	Range		10-20	0-10	20-30	0-10		
2	Subject countries	%	80	92	76	89	*** ¹¹⁵	
3	Subject countries - Non-dumped Imports	%	Not determined					*** ¹¹⁶
4	Other countries		2	0	3	1		
5	Total Demand	%	100	100	100	100		

174. It is noted that the applicant's share in demand has continuously declined in the injury period, including the POI, except in 2020-21, wherein there was a decline in the imports of subject goods from the subject countries. The market share of subject goods from other countries has remained in the range of 0-3%. The domestic industry's share has declined from ***% in the base year to ***% in the POI. As compared to 2019-20 and 2020-21, the applicant's share has increased by ***% and declined by ***% in the POI, respectively. The applicant's share increased during 2020-21 when the imports from the subject countries fell

¹¹² Para 48 of DOZCO's Written Submissions.

¹¹³ Page 20 of Everdigm's Rejoinder Submissions; Page 21 of D&A's Rejoinder Submissions.

¹¹⁴ *Id.*

¹¹⁵ Confidential as there are only two exporters with *de-minimis* margin. Revelation of this figure would lead to disclosure of import volume of the exporters to each other.

¹¹⁶ *Id.*

by ***% compared to 2019-20. It is also noted that the share of imports from other countries has also followed a similar trend.

175. As compared to 2019-20, demand grew by 17% in the POI. However, the volume of subject imports grew by 14%, whereas domestic industry's sales have increased by 36%. Nevertheless, while there was a growth of ***% in demand in the POI as compared to 2020-21, subject imports have grown by 84%. The domestic sales have declined in the POI as compared to previous year. The dumped imports in the POI are slightly above than *** times of the growth in demand. Thus, dumped imports from the subject countries have led to a decline in the market share of the applicant in the POI.

Table 4: Market Share - Fully assembled and Assemblies/Sub-assemblies							
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)
1	Applicant's domestic sales	%	***	***	***	***	
	Range	%	10-20	0-10	20-30	0-10	
2	Subject countries -	%	82	91	79	92	***117
3	Subject countries - Non-dumped Imports	%	Not determined				***118
4	Other countries	%	2	3	4	2	
5	Total Demand	%	100	100	100	100	

176. It is noted that the applicant's share in demand has continuously declined in the injury period, including the POI, except in 2020-21, wherein there was a decline in the imports of subject goods from the subject countries. The market share of subject goods from other countries has remained in the range of 2-4%. The domestic industry's share has declined from ***% in the base year to ***% in the POI. As compared to 2019-20 and 2020-21, the applicant's share has declined by ***% and ***% in the POI, respectively. The applicant's share increased during 2020-21 when the imports from the subject countries declined by 12% compared to 2019-20. It is also noted that the share of imports from other countries has also followed a similar trend. Thus, imports of subject goods from the subject countries have adversely affected the market share.

177. Everdigm and D&A have argued that the volume of imports from Korea RP has declined in the POI as compared to the previous year. It is noted that imports from Korea RP are

¹¹⁷ *Id.*

¹¹⁸ *Id.*

above the base year level as well as the entire injury period.

J.3 Price effect of dumped imports

J.3.1 Submissions by the domestic industry

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

- a. Price undercutting continued to be positive and significant despite the applicant selling at lower profits.¹¹⁹
- b. Further, the applicant has not been able to increase its selling price due to such imports.¹²⁰
- c. As opposed to D&A and Everdigm's arguments, no business would voluntarily decide to sell at losses. The applicant is forced to sell at lower prices to remain competitive in the market space, as dumped imports have severely hampered the applicant's ability to compete on price.¹²¹
- d. Eddie's claim that the cost of sales and selling price have moved in tandem and therefore, domestic industry is not suffering from injury is incorrect. The applicant has not been able to sell at a price to make reasonable returns to recuperate all its expenses. The applicant has been making sales at cost.¹²²

J.3.2 Submissions by the other interested parties

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

- a. NSR is a result of voluntary commercial decision of a business entity. Thus, presence of price undercutting in itself cannot be an indicator of injury¹²³ as the data provided by the domestic industry shows growth in terms of production as well as profitability and that, the Authority must undertake a wholistic examination.¹²⁴
- b. There has been an anomalous increase of about 56% in the cost of sales of the applicant between 2020-21 and the POI. The Authority should seek clarification from the applicant regarding this abrupt increase and examine if there are any misallocation errors.¹²⁵
- c. The applicant has been able to increase its selling prices in line with its cost of sales.

¹¹⁹ Para 53 of DOZCO's Written Submissions.

¹²⁰ Para 48 of DOZCO's Written Submissions.

¹²¹ Para 55 of DOZCO's Rejoinder Submissions.

¹²² Para 55 of DOZCO's Rejoinder Submissions.

¹²³ Page 27 of Everdigm's Written Submissions; Page 22 of Everdigm's Rejoinder Submissions; Page 27 of D&A's Written Submissions; Page 20 of D&A's Rejoinder Submissions.

¹²⁴ Page 27-28 of Everdigm's Written Submissions; Page 20 of D&A's Rejoinder Submissions.

¹²⁵ Page 28 of Everdigm's Written Submissions; Page 28 of D&A's Written Submissions.

Therefore, there is no apparent injury on this count.¹²⁶

- d. The landed value of imports from Korea RP has increased by 22 basis points as compared to the base year. The low volume of subject imports from Korea RP at such high landed price cannot be considered to injure the applicant.¹²⁷
- e. The applicant's selling prices have moved in tandem with their cost of sales. Therefore, the landed value of imports cannot be said to have any impact on the applicant's selling prices.¹²⁸

J.3.3 Examination by the Authority

J.3.3.1 Price Undercutting

180. With regards to the effect of the dumped imports on prices, it is required to be analysed whether there has been significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress the price or prevent price increases, which otherwise would have occurred in the normal course. The same has been examined in the table below:

Table 5: Price Undercutting (Dumped Imports Only - Fully Assembled Rock Breakers)								
S.No.	Particulars	Quantity	CIF	LV	NSR	PU	PU	PU
		MT	₹/MT	₹/MT	₹/MT	₹/MT	%	Range
1	Subject Countries	***	2,16,580	2,28,212	***	***	***	200-250

Table 6: Price Undercutting (Dumped Imports Only-Fully Assembled + sub-assembled/Assembled)								
S.No.	Particulars	Quantity	CIF	LV	NSR	PU	PU	PU
		MT	₹/MT	₹/MT	₹/MT	₹/MT	%	Range
1	Subject Countries	***	1,59,318	1,68,199	***	***	***	200-250

181. It is noted that price undercutting is positive and significant for the subject goods.

182. Everdigm and D&A have contended that the existence of price undercutting should not be the basis to conclude the existence of injury to the domestic industry. The Authority is aware of its obligations with regards to injury examination. It is further noted that the existence of price undercutting is a positive factor for establishing injury. However, the conclusion regarding the existence of injury to the domestic industry is an intricate exercise

¹²⁶ Page 29 of Everdigm's Written Submissions; Page 28 of D&A's Written Submissions.

¹²⁷ Page 29 of Everdigm's Written Submissions; Page 28 of D&A's Written Submissions.

¹²⁸ Paras 87-88 of Eddie's Written Submissions.

in which several factors, including the price effect of imports, are considered in conjunction.

J.3.3.2 Price suppression/depression

183. The Authority assesses price suppression/depression to examine whether imports have prevented the domestic industry from increasing its prices as well as whether such imports have led to a reduction in prices. The following table depicts the parameters useful in assessing price suppression/depression:

Table 7: Price Suppression/Depression - Fully Assembled Only						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI (dumped imports)
1	Cost of Sales	₹/MT	***	***	***	***
	Trend	Index	100	103	61	99
2	Selling Price (NSR)	₹/MT	***	***	***	***
	Trend	Index	100	96	72	99
3	Landed Value	₹/MT	3,44,564	2,89,578	4,59,647	2,28,212
	Trend	Index	100	84	133	66

184. It is noted that the applicant's cost of sales has remained almost in the same range except in 2020-21, wherein the applicant's cost of sales had substantially declined. The applicant has explained that the cost of sales declined due to fixed cost absorption as a consequence of the increase in sales during this period. It is further noted that the applicant's selling price had declined in 2019-20 with the decline in landed value. The applicant also explained that it was, however, able to maintain its selling price in 2020-21 due to a reduction in cost of sales.
185. However, despite improvement in landed value in 2020-21, the applicant was not able to increase its selling price even though there was a significant decline in its cost of sales. The domestic industry has explained that it tried to match the prices of the low-priced imports and therefore, it could not increase its selling price. The applicant also explained that it was, however, able to maintain its selling price in 2020-21 due to a reduction in cost of sales and as a consequence was able to increase its market share. However, in the POI, the cost of sales of the applicant escalated back to the range of previous years of injury period. At the same time, the landed value declined significantly and fell below base year level.
186. Eddie has argued that the selling price and cost of sales have moved in tandem, and therefore, it cannot be said that imports from the subject countries have impacted the selling price of the applicant. The applicant has submitted that Eddie's assertion is incorrect as it has been selling at cost, and has therefore, not been able to recuperate its expenses. The Authority

notes that as compared to the immediate previous year, the selling price has increased by 27 index points as opposed to an increase of 39 index points in cost of sales, whereas the landed value fell by 67 index points. Thus, the landed value has not only suppressed the prices of the applicant but also depressed them.

S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI (dumped imports)
1	Cost of Sales	₹/MT	***	***	***	***
	Trend	Index	100	103	61	99
2	Selling Price (NSR)	₹/MT	***	***	***	***
	Trend	Index	100	96	72	99
3	Landed Value	₹/MT	3,46,121	2,81,965	4,24,399	1,68,199
	Trend	Index	100	82	123	49

187. It is noted that the applicant's cost of sales has remained almost in the same range except in 2020-21, wherein the applicant's cost of sales had substantially declined. The applicant has explained that its cost of sales declined due to fixed cost absorption as a consequence of the increase in sales during this period. It is further noted that the applicant's selling price had declined in 2019-20 with the decline in landed value. However, despite improvement in the landed value in 2020-21, the applicant was not able to increase its selling price even though there was a significant decline in its cost of sales. The domestic industry has explained that it tried to match the prices of the low-priced imports to increase its market share and therefore, it could not increase its selling price. The applicant also explained that it was able to maintain its selling price in 2020-21 due to a reduction in the cost of sales. However, in the POI, the cost of sales of the applicant escalated back to the range of previous years of injury period. At the same, landed value declined drastically and fell significantly below the base year level.

J.4 Production Capacity and capacity utilisation and sales

J.4.1 Submissions by the domestic industry

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

- a. Capacity utilisation of the applicant has declined.¹²⁹
- b. Domestic industry's production has increased merely by 14%.¹³⁰

¹²⁹ Page 50 of DOZCO's Written Submissions.

¹³⁰ Para 50 of DOZCO's Written Submissions.

J.4.2 Submissions by the other interested parties

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

- a. Although the applicant's capacity has remained same throughout the injury period including the POI, the production and capacity utilisation of the applicant has increased in the POI as compared to the base year¹³¹ with the increase in demand. Thus, there is no injury to the domestic industry.¹³²
- b. The applicant has not been able to increase its production as it has focused on importing PUC rather than manufacturing the same in India. Thus, imports have not played any role in this process.¹³³

J.4.3 Examination by the Authority

190. The following table depicts the volumetric parameters of the applicant:

Table 9: Volumetric Parameters of Domestic Industry (Rock Breaker)						
S.No	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Capacity	MT	***	***	***	***
	Trend	Index	100	100	100	100
2	Production	MT	***	***	***	***
	Trend	Index	100	79	148	114
3	Capacity Utilisation	%	***	***	***	***
	Range	%	30-40	20-30	40-50	30-40
4	Domestic Sales	MT	***	***	***	***
	Trend	Index	100	84	172	115

191. The applicant's capacity has remained the same throughout the injury period, including the POI. The applicant's production has declined significantly as compared to 2020-21. It is noted that during this period the volume of imports from the subject countries significantly declined. It is further noted that between 2019-20 and the POI, the applicant's production has increased by 35 index points. However, during the same period, the volume of subject imports increased by 150 index points. The demand for subject goods has also continuously increased except in 2020-21.

192. Everdigm, Soosan, FEEL, DAEMO and Ningbo have argued that the applicant has been

¹³¹ Page 26 of Everdigm's Written Submissions; Page 30 of Everdigm's Written Submissions; Pages 29-30 of D&A's Written Submissions.

¹³² Page 17 of Soosan's Written Submissions; Page 17 of DAEMO's Written Submissions; Page 17 of FEEL's Written Submissions; Page 16 of Ningbo's Written Submissions.

¹³³ Para 54 of Written Submissions.

able to increase its sales and production with the growth in demand. It is, however, noted that the applicant has not been able to increase its sales and production in proportion with the growth in demand during the POI on account of dumped imports from the subject countries. The applicant's market share has significantly declined, whereas the market share of imports has significantly increased. The demand between 2019-20 and the POI increased by ***MT. Almost ***% of this growth has been captured by subject imports, and the domestic industry was only able to utilize ***% of this growth. Thus, almost the entire growth in demand has been captured by the dumped imports from the subject countries.

J.5 Market Share

J.5.1 Submissions by the domestic industry

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

- a. Imports from the subject countries have captured 79% of the domestic market.¹³⁴ Thus, the applicant has not been able to increase its sales volume.¹³⁵ The increase in sales is not in with the increase in demand.¹³⁶

J.5.2 Submissions by the other interested parties

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

- a. The applicant's sales have increased with the increase in demand.¹³⁷ The applicant's sales have also increased as compared to the base year, and therefore, there is no injury to the applicant.¹³⁸
- b. The import volume of subject goods from Korea RP declined significantly during the POI as compared to the base year. Therefore, such imports could not impact the domestic industry's performance¹³⁹. Further, the domestic industry's performance has improved during the entire injury period, including the POI.¹⁴⁰

¹³⁴ Para 50 of DOZCO's Written Submissions.

¹³⁵ Para 50 of DOZCO's Written Submissions.

¹³⁶ Para 56(c) of DOZCO's Written Submissions.

¹³⁷ Page 15 of Soosan's Written Submissions.

¹³⁸ Page 17 of Soosan's Written Submissions; Page 17 of DAEMO's Written Submissions; Page 18 of FEEL's Written Submissions.

¹³⁹ Page 26 of Everdigm's Written Submissions.

¹⁴⁰ Page 26 of Everdigm's Written Submissions.

J.5.3 Examination by the Authority

195. The following table shows the market share of the domestic industry and subject imports:

Table 10: Market Share Fully Assembled								
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)	
1	Applicant's domestic sales	%	***	***	***	***		
	Range	%	10-20	0-10	20-30	0-10		
2	Subject countries - Dumped Imports	%	80	92	76	89	***141	
3	Subject countries - Non-dumped Imports	%	Not determined					***142
4	Other countries	%	2	0	2	1		
5	Total Demand	%	100	100	100	100		
6	Total Demand	MT	***	***	***	***		
	Trend	Index	100	197	147	231		

Table 11: Market Share – Fully Assembled+ Assemblies/Sub-assemblies								
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)	
1	Applicant's domestic sales	%	***	***	***	***		
	Range	%	10-20	0-10	20-30	0-10		
2	Subject countries	%	82	91	79	92	***143	
3	Subject countries - Non-dumped Imports	%	Not determined					***144
4	Other countries	%	2	0	3	1		
5	Total Demand	%	100	100	100	100		
6	Total Demand	MT	***	***	***	***		
	Trend	Index	100	206	160	327		

196. As compared to the base year, the applicant's sales have increased by 15 index points in the POI in absolute numbers. During the same period, demand has grown by 131 (fully assembled only) and 226 (fully assembled and assemblies/sub-assemblies) index points.

¹⁴¹ Confidential. For preserving intra-party confidentiality.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

However, despite an increase in the absolute quantity of sales and demand as compared to the base year, the applicant's market share has declined by 9-10%. During this period, the share of subject imports from the subject countries has increased by 10% in absolute terms. As compared to 2020-21, a period in which the applicant's sales had peaked in terms of absolute numbers as well as market share, the applicant's market share has declined by **%, the market share of subject countries increased by 13% in the POI. Out of the 92% market share, **% of the market share is occupied by dumped imports.

197. It is further noted that even with the increase in demand over the four-year period, the growth of imports from the subject countries has far exceeded the growth in sales of the applicant. At the fully assembled level, while demand grew by **% between 2020-21 and the POI, subject imports increased by 83%. As compared to 2019-20, demand has grown by **%, whereas subject imports have increased by 13%. It is further noted that a significant volume of this growth has entered into the commerce of India at dumped prices.

198. If the entire volumes of rock breakers including assemblies/sub-assemblies is considered, it is noted that between the period 2020-21 and the POI, the volume of dumped imports from the subject countries grew by 139% whereas demand grew by **. However, during this period, the applicant's sales declined by **. Further, between 2019-20 and POI, demand has grown by **% whereas subject imports has increased by 62%. **% of the subject imports have been found to have entered into the commerce of India at dumped prices. Thus, the applicant has not been able to benefit from the growth in demand, whereas the quantum of dumped imports has exceeded the growth in demand.

J.6 Financial Parameters of the domestic industry

J.6.1 Submissions by the domestic industry

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

- a. The applicant has been selling its products at prices much lower than its cost of sales due to the presence of dumped imports.
- b. The applicant has not been able to earn remunerative prices on its sales and, therefore, has been in losses.

J.6.2 Submissions by the other interested parties

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

- a. The information regarding profitability parameters is distorted as the applicant has

provided cumulative data¹⁴⁵ of domestic and export sales. Any conclusion of injury based on such distorted information would not be an objective examination.¹⁴⁶

- b. The profitability of the applicant has increased sharply during the POI as compared to the base year.¹⁴⁷
- c. As per the revised information submitted by the applicant due to the error in indexation, it can be noted that the applicant has been a loss-making entity since the base year and has continued to incur losses during the entire injury period even though there was no dumping of the subject goods during this period. Thus, there are factors other than imports which are causing injury to the domestic industry.¹⁴⁸
- d. The revised data submitted by the applicant shows the ROCE figure as positive, whereas rest of the profitability figures are negative. The Authority should examine the veracity of the profitability parameters of the domestic industry.¹⁴⁹
- e. The increase in average capital employed despite a decline in fixed assets/depreciation and no change in installed capacity is inexplicable.¹⁵⁰
- f. It is submitted that working capital and inventory have a direct correlation. However, the applicant's working capital is showing an abnormal trend whereas average inventory has not moved in the same trend. The figures provided by the applicant appear to be concocted and incorrect.¹⁵¹
- g. The PBIT as % of capital employed has increased sharply for rock breaker in the POI as compared to the base year, which establishes that there is no injury to the domestic industry.¹⁵²

J.6.3 Examination by the Authority

201. The following depicts the financial parameters of the applicant:

Table 12: Profitability Parameters (Rock breakers)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Cost of Sales	₹/MT	***	***	***	***
	Trend	Index	100	103	61	99

¹⁴⁵ Page 87 and 90 of the DI petition as cited by Everdigm, D&A.

¹⁴⁶ Page 30 of Everdigm's Written Submissions; Page 30 of D&A's Written Submissions.

¹⁴⁷ Page 16 of Soosan's Written Submissions; Page 16 of DAEMO's Written Submissions; Page 16 of Ningbo's Submissions.

¹⁴⁸ Page 11-12 of Soosan's Written Submissions; Page 12 of DAEMO's Written Submissions.

¹⁴⁹ Page 21 of Everdigm's Rejoinder Submissions; Page 22 of D&A's Rejoinder Submissions.

¹⁵⁰ Page 19 of Soosan's Written Submissions.

¹⁵¹ Page 19 of Soosan's Written Submissions; Page 19 of FEEL's Written Submissions.

¹⁵² Page 20 of Soosan's Written Submissions.

Table 12: Profitability Parameters (Rock breakers)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
2	Selling Price	₹/MT	***	***	***	***
	Trend	Index	100	96	72	98
3	Profit/Loss	₹/MT	(***)	(***)	(***)	(***)
	Trend	Index	(100)	(106)	(21)	(104)
4	PBIT	₹ lacs	(***)	(***)	(***)	(***)
	Trend	Index	(100)	(106)	(26)	(143)
5	Cash Profits	₹ lacs	(***)	(***)	(***)	(***)
	Trend	Index	(100)	(102)	(19)	(143)
6	ROCE	%	(***)	(***)	(***)	(***)
	Trend	Index	(100)	(157)	(32)	(155)

202. It is noted that the applicant's cost of sales has remained in the same range throughout the injury period, including the POI, except in the year 2021-22, wherein the applicant's cost of sales significantly declined. The applicant has stated the same was on account of fixed cost absorption due to an increase in sales. However, cost of sales increased back to pre-2020-21 levels during the POI. The applicant has been selling its product at prices much below its cost of sales since the base year. The applicant has explained that due to the presence of low-priced imports, the domestic industry has not even been able to recover even its cost of sales. The applicant has been experiencing losses since the base year. However, these losses have aggravated in the POI.
203. The applicant incurred significant losses in 2019-20 as well. It is noted that the landed value of the subject imports was lowest during this period. Although landed value has improved in the POI as compared to 2019-20, it remains significantly below the cost of sales of the applicant. The applicant's PBIT and cash profits have followed the same trend as profits.
204. Everdigm and D&A have claimed that the applicant included the data on its export sales within the domestic sales. It is clarified that the investigation team has considered data pertaining to the domestic performance of the applicant. Furthermore, export sales constitute less than [*** %] of total sales.
205. It is noted that the applicant's ROCE has also declined over the injury period, including the POI, after recovering in 2020-21. Soosan and FEEL have argued that the applicant's working capital and inventory have not moved in the same trend even though the two have a correlation. Soosan has, therefore, alleged that the applicant has incorrectly reported its data. It is noted that inventory level is merely one of the many factors with which working capital has direct correlation. Therefore, it is not necessary that working capital and inventory would fall the same trend.

206. Soosan and FEEL have also argued that change in capital employed despite no change in fixed assets and depreciation is improper. It is noted that capital employed has changed due to the sale of fixed assets by a related party to the applicant.

J.7 Salary, Wages and No. of Employees

J.7.1 Submissions by the domestic industry

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

- a. The number of employees has remained constant since 2020-21 FY. However, the salaries and wages have increased by 44 index points indicating the rising operating cost of the domestic industry.
- b. It is submitted that the PUC is a complex engineered product and requires technically skilled staff who need to be paid higher remuneration.¹⁵³

J.7.2 Submissions by the other interested parties

208. The following submissions have been made by the other interested parties

- a. The salaries and wages of the employees have increased with the increase in the number of employees, and therefore, there is no injury.¹⁵⁴
- b. The productivity per day per employee of the applicant has increased.¹⁵⁵

J.7.3 Examination by the Authority

209. The following tables shows the figures pertaining to wages, employment, and productivity of the applicant:

Table 13: Employment (Rock Breakers)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Wages	₹ lacs	***	***	***	***
	Trend	Index	100	100	117	145
2	No. of Employees	Nos.	***	***	***	***
	Trend	Index	100	100	127	132
3	Productivity/day		***	***	***	***
	Trend	Index	100	79	148	114

¹⁵³ Para 51 of DOZCO's Written Submissions.

¹⁵⁴ Page 18 of Soosan's Written Submissions; Page 16 of DAEMO's Written Submissions; Page 18 of FEEL's Written Submissions; Page 17 of Ningbo's Written Submissions.

¹⁵⁵ Page 18 of Soosan's Written Submissions; Page 19 of of FEEL's Written Submissions.

Table 13: Employment (Rock Breakers)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
4	Productivity/Employee		***	***	***	***
	Trend	Index	100	79	116	86
5	Wages/Employee	₹ lacs/Nos	***	***	***	***
	Trend	Index	100	100	92	110

210. It is noted that wages of employees have increased over the injury period and have peaked in the POI. The number of employees has also increased over the course of the injury period. The applicant explained that the PUC is a complex engineering product and they have, therefore, hired skilled labourers who demand higher remuneration. It is further noted that with an increase in production during 2020-21, the number of employees increased. The increase in wages/employee is nominal. It is noted that productivity per day has increased, whereas productivity per employee has registered a marginal decline.

211. Soosan and FEEL have argued that the applicant is not suffering from injury as it has been able to increase wages as well as its number of employees. It is noted that a mere increase in wages and the number of employees cannot be a ground to conclude the non-existence of injury.

J.8 Inventories

J.8.1 Submissions by the domestic industry

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

J.8.2 Submissions by the other interested parties

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

- The trend of working capital and average inventory do not exhibit the same trend, even though the two are interrelated.¹⁵⁶

J.8.3 Examination by the Authority

214. The following table shows the inventory figures of the applicant:

Table 14: Inventories (Rock Breakers)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Average Inventory	MT	***	***	***	***

¹⁵⁶ Page of Soosan's Rejoinder Submissions; Page of FEEL's Written Submissions.

Table 14: Inventories (Rock Breakers)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
	Trend	Index	100	117	112	140

215. It is noted that the applicant's inventories have increased over the injury period except during 2020-21, wherein it registered a marginal decline as compared to the previous year but remained above the base year level. The inventories have attained their highest level during the POI. The applicant has explained that despite undertaking limited production and selling below cost of sales, it has not been able to increase its sales only marginally due to the presence of low-price dumped imports in the market.

J.9 Growth

J.9.1 Submissions by the domestic industry

216. No contesting submissions have been made by the domestic industry.

J.9.2 Submissions by the other interested parties

217. No contesting submissions have been made by the other interested parties.

J.9.3 Examination by the Authority

218. The following table shows the inventory figures of the applicant:

Table 15: Growth (Rock Breakers)						
S.No.	Particulars		2019-20	2020-21	POI	POI compared to the base year
1	Production	%	(***)	***	(***)	***
2	Domestic Sales	%	(***)	***	(***)	***
3	Profit/Loss	%	(***)	***	(***)	(***)
4	ROCE	%	(***)	***	(***)	(***)
5	Inventory	%	***	(***)	***	***
6	Market Share	%	(***)	***	(***)	(***)

219. From the above, it is noted that the domestic industry has exhibited growth in terms of sales and production as compared to the base year, whereas its performance has declined with respect to other parameters. It is further noted that the domestic industry's performance in POI significantly declined as compared to the previous year. The domestic industry's performance improved in 2020-21 compared to 2019-20. It is noted that during this period, the volume of imports from the subject countries declined, whereas landed value improved.

However, with the consequent increase in dumped imports during the POI and the decline in landed value, domestic industry's parameters were affected adversely.

J.10 Magnitude of Dumping Margin

J.10.1 Submissions made by the domestic industry

220. No contesting submissions have been made by the domestic industry.

J.10.2 Submissions made by the other interested parties

221. No contesting submissions have been made by the other interested parties.

J.10.3 Examination by the Authority

222. As noted above, the dumping margin of the subject goods from the subject countries except D&A and Soosan is above the *de minimis* limit and is significant. It is further noted that the dumping margin of the cooperating producers from Korea RP and China PR is also above the *de minimis* limit and is significant (barring D&A and Soosan) for rock breakers.

J.11 Ability to raise capital investment

J.11.1 Submissions made by the domestic industry

223. No contesting submissions have been made by the other interested parties.

J.11.2 Submissions made by the other interested parties

224. No contesting submissions have been made by the other interested parties.

J.11.3 Examination by the Authority

225. The applicant has submitted that due to dumped imports from the subject countries, it has been forced to sell below cost of sales and has therefore been making losses, which has impacted its ability to raise capital investment for further expansion and diversification.

226. It is noted that with the continuous losses being suffered by the domestic industry, its ability to raise capital has been adversely affected. However, despite an increase in demand for the subject goods in the POI, the applicant's performance has deteriorated considerably, and thereby, its ability to raise capital investments has diminished.

K SECTION: CHISELS**K.1 Volume effect of dumped imports*****K.1.1 Submissions made by the domestic industry***

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

- a. The volume of imports of chisels has increased in absolute as well as relative terms.

K.1.2 Submissions made by the other interested parties

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

- a. Imports of subject goods from Korea RP have declined in relation to total Indian production, and total Indian demand as well as total imports of the PUC during the POI as compared to the base year.¹⁵⁷
- b. The imports of chisel have moved in tandem with the increase in Indian demand. During the same period, the applicant has been able to significantly improve its production. Thus, there is no volume injury.¹⁵⁸
- c. The volume of imports of chisel from Korea RP have halved with the decline in demand of the subject goods¹⁵⁹. Sales of the domestic industry have also declined. Whereas the volume of imports from China PR of chisel has increased significantly as compared to the previous year.¹⁶⁰

K.1.3 Examination by the Authority

229. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in the volume of dumped imports, either in absolute terms or relative to production or consumption in India. As stated above, the investigating team has arrived at the final volumes based on DG Systems data coupled with the export information provided by the participating producers.

230. It is also noted that chisels are either sold as a separate commodity, or it may be sold along with the rock breakers. A significant quantity of chisels may have been imported along with rock breakers. The volumetric parameters examined below represent imports of chisels

¹⁵⁷ Page 34 of Everdigm's Written Submissions; Page 34 of D&A's Written Submissions.

¹⁵⁸ Para 50 of Eddie's Written Submissions.

¹⁵⁹ Page 33 of Everdigm's Written Submissions; Page 33 of D&A's Written Submissions.

¹⁶⁰ Page 16 of Soosan's Written Submissions; Page 15 of FEEL's Written Submissions; Para 30 of Hansung's Written Submissions.

which are sold as a separate commodity and not chisels sold along with rock breakers since it was not possible to segregate the entire volume of chisels exported to India.

231. The distribution of various sources of supply of the PUC in demand is as follows:

Table 16: Volume Parameters (Chisels)								
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)	
1	Domestic Sales – Applicant	MT	***	***	***	***		
	Trend	Index	100	94	88	76		
2	Domestic Sales - Other Producers	MT	-	-	-	-		
	Trend	Index	-	-	-	-		
3	Subject Countries	MT	2,705	6,707	4,727	7,185	***161	
	Trend	Index	100	248	175	266	-	
4	Subject Countries - Non-dumped Imports	MT	Not determined					***162
5	Other Countries – Imports	MT	19	47	51	36	-	
	Trend	Index	100	247	266	186		
6	Total imports	MT	2,724	6,754	4,778	7,220		
	Trend	Index	100	248	175	265		
7	Total Demand	MT	***	***	***	***		
	Trend	Index	100	187	141	190		
Subject Imports in relation to								
8	Indian Production	%	***	***	***	***	***163	
	Range	%	100-150	350-400	250-300	450-500	450-500	
9	Total Demand	%	***	***	***	***	***164	
	Range	%	60-70	70-80	70-80	80-90	80-90	
10	Total Imports	%	99	99	99	100	***165	

232. Table 16 shows that subject imports from the subject countries have increased from 2705 MT in the base year to 7185¹⁶⁶ MT in the POI, i.e. an increase of 4469¹⁶⁷ MT compared to the base year. The non-dumped import volume is ^{***} 168 MT. The demand for subject goods

¹⁶¹ See note 143.

¹⁶² Number has been kept confidential as it pertains to a single exporter.

¹⁶³ Number has been kept confidential as it pertains to a single exporter.

¹⁶⁴ Number has been kept confidential as it pertains to a single exporter.

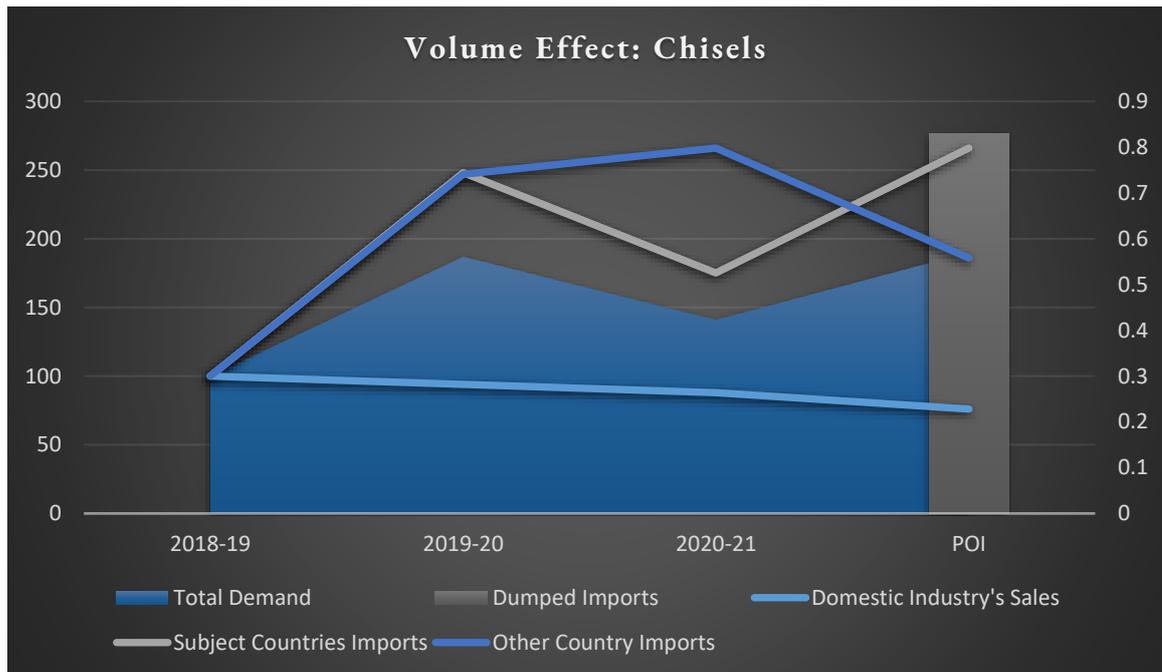
¹⁶⁵ Number has been kept confidential as it pertains to a single exporter.

¹⁶⁶ Confidential. Disclosure of these figures from total imports would reveal the volume of a single exporter.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

has also increased through the POI except in 2020-21, wherein the demand declined. However, the demand remained substantially above the base year level. During 2020-21, the volume of imports from the subject countries declined significantly by almost 2000 MT as compared to 2019-20. It is noted that despite a decline in volume, the applicant was not able to increase its sales of chisels.



233. Further, with a significant increase in demand for the subject goods in the POI, the volume of dumped imports has increased significantly as compared to the previous year. However, the domestic industry's sales during the same period have declined by *** %. Thus, the dumped imports from the subject countries have not only captured the entire growth in demand but also captured the share of the domestic industry.
234. Eddie has contended that the volume of imports from the subject countries has moved in tandem with the demand of the subject goods and that the domestic industry has been able to increase its production accordingly. It is noted that the domestic industry's sales have declined in the POI despite an increase in demand. Thus, dumped imports from the subject countries have not only subsumed the entire growth in demand but also captured the market share of the domestic industry.
235. As regards the relative increase in dumped imports from the subject countries, it is noted that as compared to the base year, dumped imports from the subject countries in relation to Indian production have increased by almost 342% in the POI as compared to the base year

and 211% as compared to 2020-21 and constitute almost 100% of the volume of imports into India in the POI. The share of subject imports from the subject countries in demand has also increased from ***% in the base year to ***% in the POI, out of which ***% is dumped. The share of dumped imports is ***% of total demand and is above 2019-20 levels. Further, as compared to 2019-20 and 2020-21, the share of subject imports in the POI in relation to demand has increased by ***% and ***% respectively. Dumped imports constitute ***% of the total demand in the POI and have increased by ***% as compared to 2019-20. However, in relation to 2020-21, they have increased by ***%.

236. Soosan, Hansung, FEEL, D&A and Everdigm have argued that the volume of chisels has declined from Korea RP, and the injury to the applicant is due to an increase in the volume of imports of China PR. Based on the import data above, it is noted that the volume of imports of chisel from Korea has increased significantly as compared to the base year as well as the previous year. It is also noted that while imports from China PR have remained at their 2019-20 levels, the import volume from Korea PR has increased. The Authority, therefore, disagrees with the contention that injury to the domestic industry is solely due to imports from China PR.

K.2 Volume effect of the dumped imports on the market share of the domestic industry

K.2.1 Submissions made by the domestic industry

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

- a. The applicant's market share has declined significantly as compared to the base year whereas market share of other producers has increased significantly. Despite operating on low-capacity utilisation, the applicant has not been able to capture domestic market share because of dumped imports.¹⁶⁹

K.2.2 Submissions made by the other interested parties

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

- a. The decline in the domestic industry's market share of chisels is due to an increase in domestic sales of fully assembled hydraulic rock breakers in which chisels are captively consumed¹⁷⁰.

¹⁶⁹ Para 49 of DOZCO's Written Submissions.

¹⁷⁰ Page 20 of Everdigm's Rejoinder Submissions; Page 21 of D&A's Rejoinder Submissions.

K.2.3 Examination by the Authority

239. The following table shows the market share of various sources of supply of chisel in India:

Table 17: Market Share (Chisels)							
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)
1	Applicant's domestic sales	%	***	***	***	***	
	Range		40-50	10-20	20-30	10-20	
2	Subject countries	%	60	79	74	84	*** ¹⁷¹
3	Subject countries - Non-dumped Imports	%	Not determined				*** ¹⁷²
4	Other countries		0	1	1	0	
5	Total Demand	%	100	100	100	100	

240. It is noted that the applicant's market share in the POI has declined as compared to all three years of the injury period. At the same time, the volume of subject goods from the subject countries has increased in the POI as compared to the previous year's levels. The market share of the non-subject countries has remained in the same range of 0-1%. The domestic industry's market share for chisels has declined by ***% as compared to the base year. During the same period, imports from the subject countries increased by 24%. During 2020-21, the domestic industry's market share increased as compared to 2019-20. This period also witnessed a decline in imports of the subject goods from the subject countries. However, despite an increase in demand in the POI of around ***% as compared to the previous year, the domestic industry's sales have declined. Further, the demand in the POI is almost at 2019-20 levels. However, as compared to 2019-20, domestic industry's sales have declined.

241. Everdigm and D&A argued that there has been a decline in sales of chisels as the applicant has chosen to sell chisels attached to rock breakers. The investigating team enquired into this allegation, and it is noted that even where the applicant sells chisels along with the rock breaker, the transaction of chisel is recorded separately and not subsumed within the transaction of rock breakers. Therefore, the Authority does not agree with the submissions of Everdigm and D&A.

¹⁷¹ See note 143.

¹⁷² *Id.*

K.3 Price effect of the dumped imports on the domestic Industry***K.3.1 Submissions made by the domestic industry***

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

- a. Price undercutting from both subject countries is positive and significant, particularly in case of China¹⁷³.

K.3.2 Submissions made by the other interested parties

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

- a. Change in cost and selling price cannot in itself indicate price suppression and depression on account of imports of PUC from Korea RP.¹⁷⁴
- b. The landed value of imports from Korea RP has no correlation with domestic industry's selling price. The applicant has not been pressurised to reduce or increase its price due to low volume high priced imports from Korea RP.¹⁷⁵
- c. The Authority should seek explanation regarding the anomalous increase of about 34% in cost of sales for chisel between 2020-21 and the POI.¹⁷⁶

K.3.3 Examination by the Authority***K.3.3.1 Price Undercutting***

Table 18: Price Undercutting - Chisels (Dumped Imports Only)								
S.No.	Particulars	Quantity	CIF	LV	NSR	PU	PU	PU
		MT	₹/MT	₹/MT	₹/MT	₹/MT	%	Range
1	Subject Countries	***	79,887	87,705	***	***	***	70-80

244. The price undercutting for chisels is positive and significant.

245. D&A and Everdigm have argued that the price undercutting of chisels from Korea RP is negative. It is noted that once this Authority reaches a decision pertaining to the cumulation of imports from different sources of dumping, it is not required to assess price undercutting for each subject country separately. Rather, the obligation under Art. 3.4 of the Agreement on Anti-dumping, as well as under Annexure – II of the AD Rules, is to assess the price

¹⁷³ Para 49 of DOZCO's Written Submissions.

¹⁷⁴ Page 35 of Everdigm's Written Submissions; Page 35 of D&A's Written Submissions.

¹⁷⁵ Page 35 of Everdigm's Written Submissions; Page 35 of D&A's Written Submissions.

¹⁷⁶ Page 35 of Everdigm's Written Submissions; Page 35 of D&A's Written Submissions.

effects of dumped imports irrespective of the source, subject to fulfilment of *de minimis* criteria and conditions of competition.

246. D&A and Everdigm have argued that setting up of NSR is a voluntary commercial decision; therefore, price undercutting alone cannot indicate the existence of injury. For reasons mentioned in Section Rock breaker above, the Authority agrees with the D&A and Everdigm that price injury cannot in itself be the conclusive evidence of injury.
247. Concerning D&A and Everdigm's first limb of submission, this Authority agrees with D&A and Everdigm. The setting up of NSR is indeed a voluntary commercial decision, which is taken up by any entity, taking into account the various factors at play. Selling significantly below the cost of sales over an elongated period of time may not be considered commercially prudent for any business entity unless it intends to get an advantage over its competitors in terms of market share etc. However, this is not the case in the present investigation. The landed value of subject goods from the subject countries has been consistently below the cost of sales as well as the selling price.
248. Thus, despite undertaking losses in its sales and efforts to match the low price of the dumped imports, the applicant has not been able to increase its market share.

K.3.3.2 Price Suppression/Depression

249. The Authority assesses price suppression/depression to examine whether imports have prevented the domestic industry from increasing its prices and whether such imports have led to a reduction in prices. The following table depicts the parameters useful in assessing price suppression/depression:

Table 19: Price Suppression/Depression (Chisels)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Cost of Sales	₹/MT	***	***	***	***
	Trend	Index	100	122	90	127
2	Selling Price (NSR)	₹/MT	***	***	***	***
	Trend	Index	100	102	100	113
3	Landed Value	₹/MT	86,308	73,680	91,200	87,705
	Trend	Index	100	85	106	102

250. It is noted that there has been variation in the applicant's cost of sales throughout the injury period. It is further noted that the applicant's NSR has consistently remained below the landed value. The landed value has declined in the POI as compared to previous year. The landed value continues to remain significantly below the cost of sales. The applicant has explained that its cost of sales had declined in 2020-21 due to fixed cost absorption as a result

of increase in sales.

251. While the cost of sales increased by 27 points¹⁷⁷, selling price increased by only 13 index points, whereas landed value increased by merely 2 points as compared to the base year. Despite significant improvement in landed value in 2020-21 and a decline in cost of sales, the applicant was not able to increase its selling price. The applicant has explained that it made an attempt to match the prices of the dumped imports and increase its market share. As can be noted from Table 17, the applicant succeeded in increasing its market share during 2020-21. However, in the POI, the applicant industry has slightly increased its price to reduce its losses. Nevertheless, this has led to a decline in sales and a reduction in the market share of the applicant.
252. Everdigm and D&A have argued that changes in cost and selling price cannot by themselves indicate price suppression/depression. As stated above, the Authority compares several parameters to examine price suppression/depression. The aforementioned parameters are considered in conjunction and the Authority adopts a causation approach to establish whether imports are suppressing/depressing the prices of the applicant.
253. It is further noted that between 2020-21 and the POI, the cost of sales increased by 27 index points. During this period the landed value also increased 2 index points and reached its second highest level in the entire injury period, including the POI. The applicant was also able to increase its prices by 13 index points. However, the increase in selling price was much below the rise in the cost of sales. It is observed that during this period imports from the subject countries were undercutting domestic prices by ***%. Thus, the applicant could not increase its selling price. Thus, imports from the subject countries suppressed/depressed the prices of the applicant.
254. Everdigm and D&A have also argued that imports of chisels from Korea RP are low in volume and are high in price. For the reasons mentioned above regarding the cumulation of imports from subject countries, it is noted that the effect of dumped imports has to be considered as whole and not country-wise, and therefore, the Authority does not agree with Everdigm and D&A.

K.4 Production, capacity, capacity utilization and sales

K.4.1 Submissions by the domestic industry

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

¹⁷⁷ As compared to base year.

- a. Capacity utilisation of the applicant has declined.¹⁷⁸
- b. The applicant's production has declined.¹⁷⁹

K.4.2 Submissions by the other interested parties

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

- a. The capacity has remained the same during the entire injury period. The decline in production and capacity utilisation¹⁸⁰ is due to a decline in demand for chisels¹⁸¹, and this decline cannot be attributed to subject imports from the subject countries.¹⁸²

K.4.3 Examination by the Authority

257. The following table depicts the volumetric parameters of the applicant:

Table 20: Volumetric Parameters of the Domestic Industry (Chisels)						
S.No	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Capacity	MT	***	***	***	***
	Trend	Index	100	100	100	100
2	Production	MT	***	***	***	***
	Trend	Index	100	98	92	80
3	Capacity Utilisation	%	***	***	***	***
	Range	%	30-40	30-40	30-40	20-30
4	Domestic Sales	MT	***	***	***	***
	Trend	Index	100	94	88	76

258. It is noted that the applicant's capacity has remained constant throughout the injury period, including the POI. However, production has gradually declined over the injury period, including the POI. Hansung, Soosan and DAEMO have contended that the decline in the applicant's production is a consequence of the decline in demand. However, as has been established above, demand for the subject goods has increased over the years, except in 2020-21. However, the applicant's sales have declined by 18 index points compared to 2019-20. At the same time, the volume of imports from the subject countries has increased. With the decline in production, the applicant's capacity utilisation has also declined and has reached its lowest level in the POI. The applicant's sales have also declined over the injury period, whereas the volume of subject imports has continuously increased. Thus, the dumped

¹⁷⁸ Page 50 of DOZCO's Written Submissions.

¹⁷⁹ Para 50 of DOZCO's Written Submissions.

¹⁸⁰ Para 32 of Hansung's Written Submissions.

¹⁸¹ Page 17 of Soosan's Written Submissions; Page 17 of Soosan's Written Submissions.

¹⁸² Page 17 of DAEMO's Written Submissions; Page 17 of Soosan's Written Submissions; Page 15 of Ningbo's Written Submissions.

imports have adversely affected the applicant's volumetric parameters.

K.5 Volume effect of the dumped imports on the market share of the domestic Industry

K.5.1 Submissions by the domestic industry

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

- a. The imports of chisels are 3 times the total Indian production. The demand for chisels has steadily increased. However, the domestic market has been entirely captured by low-priced imports.¹⁸³
- b. Market share of the applicant has declined during the POI even though the demand for rock breakers has increased by 31% since the base year. The decline in market share of the domestic producers is due to increase in the volume of low-priced imports¹⁸⁴.

K.5.2 Submissions by the other interested parties

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

- a. The decline in sales of chisel may be attributed to the decline in demand¹⁸⁵ of the subject goods and not to the imports from the subject countries.¹⁸⁶
- b. The sales quantity and sales value of chisels have declined even though sales of rock breakers have increased. This difference in the performance of rock breakers and chisels shows a clear case of sales substitution wherein the customers prefer to buy fully assembled rock breakers with chisels (downstream product) rather than buying chisels (upstream product) separately.¹⁸⁷ Thus, the independent decline in sales of chisels cannot be considered injurious to the applicant.¹⁸⁸

K.5.3 Examination by the Authority

261. The following table shows market share of the domestic industry and the subject countries in the total Indian demand:

¹⁸³ Para 47 of DOZCO's Written Submissions.

¹⁸⁴ Para 48 of DOZCO's Written Submissions.

¹⁸⁵ Para 33 of Hansung's Written Submissions.

¹⁸⁶ Page 18 of DAEMO's Written Submissions; Page 18 of FEEL's Written Submissions; Page 15 of Ningbo's Written Submissions.

¹⁸⁷ Page 37 of Everdigm's Written Submissions; Page 37 of D&A's Written Submissions.

¹⁸⁸ Page 37 of Everdigm's Written Submissions; Page 37 of D&A's Written Submissions.

Table 21: Market Share (Chisels)								
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI	POI (Dumped Imports)	
1	Applicant's domestic sales	%	***	***	***	***		
	Range	%	40-50	10-20	20-30	10-20		
2	Subject countries imports	%	60	80	74	84	*** ¹⁸⁹	
3	Subject countries Non-dumped Imports	%	Not determined					*** ¹⁹⁰
4	Other countries	%	0	1	1	0		
5	Total Demand	%	100	100	100	100		
6	Total Demand	MT	***	***	***	***	-	
	Trend	Index	100	187	141	190		

262. As compared to the base year, the applicant's sales have declined in the POI by 24 index points, whereas it has lost a market share of ***%. During the same period, demand has almost become twice as much as the base year. The volume of imports has continuously increased except a decline in 2020-21, even so, it remained above the base year level. Despite witnessing a strong rebound in demand during the POI, the applicant was not able to increase its market share. It is further noted that the demand is almost at level of 2019-20, however, the applicant's sales have declined whereas the share of dumped imports has declined by ***% in the total demand. Thus, the dumped imports have prevented the applicant from increasing its market share.
263. Hansung has argued that the demand for chisels has declined and therefore, the applicant is suffering from losses. It is noted that demand for the chisels is at its highest level in the POI and therefore, Hansung's submissions are not tenable.
264. Everdigm and D&A have argued that the applicant's sales in chisel have declined as it has started to sell chisels primarily with rock breakers. It is noted that the applicant records the sale of chisels separately in its sales register even if it is sold along with rock breakers. The Authority, therefore, does not agree with Everdigm and D&A's submissions.

K.6 Financial Parameters of the domestic industry

K.6.1 Submissions by the domestic industry

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

¹⁸⁹ Confidential. Disclosure of these figures from total imports would reveal the volume of a single exporter.

¹⁹⁰ *Id.*

- a. The applicant has been suffering from significant losses due to dumped imports.
- b. The applicant has been forced to sell below the cost of sales due to the presence of dumped imports and is therefore not able to earn adequate returns.

K.6.2 Submissions by the other interested parties

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

- a. The profitability data provided by the applicant is distorted as the applicant has cumulated¹⁹¹ information on domestic as well as export sales.¹⁹²
- b. The profitability of the applicant has increased sharply during the POI as compared to the base year.¹⁹³
- c. It is submitted that working capital and inventory have a direct correlation. However, the applicant's working capital is showing an abnormal trend whereas the average inventory has not moved in the same trend. The figures provided by the applicant appear to be concocted and incorrect.¹⁹⁴
- d. The PBIT as % of capital employed has increased substantially¹⁹⁵ and sharply for chisel in the POI as compared to the base year which establishes that there is no injury to the domestic industry.¹⁹⁶
- e. The revised data submitted by the applicant shows the ROCE figure as positive, whereas the rest of the profitability figures are negative. The Authority should examine the veracity of the profitability parameters of the domestic industry.¹⁹⁷

K.6.3 Examination by the Authority

267. The following depicts the financial parameters of the applicant:

Table 22: Profitability Parameters (Chisels)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Cost of Sales	₹/MT	***	***	***	***

¹⁹¹ Page 87 and 90 as cited by Everdigm.

¹⁹² Page 37 of Everdigm's Written Submissions; Page 37-38 of D&A's Written Submissions.

¹⁹³ Page 16 of Soosan's Written Submissions; Page 16 of DAEMO's Written Submissions; Page 17 of Ningbo's Written Submissions; Para 34 of Written Submissions; Page 38 of Everdigm's Written Submissions.

¹⁹⁴ Page 20 of Soosan's Written Submissions; Page 20 of FEEL's Written Submissions; Page 19 of Ningbo's Written Submissions.

¹⁹⁵ Para 37 of Hansung's Written Submissions.

¹⁹⁶ Page 20 of Soosan's Written Submissions; Page 20 of FEEL's Written Submissions; Page 19 of Ningbo's Written Submissions.

¹⁹⁷ Page 21 of Everdigm's Rejoinder Submissions.

Table 22: Profitability Parameters (Chisels)

S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
	Trend	Index	100	122	90	127
2	Selling Price	₹/MT	***	***	***	***
	Trend	Index	100	102	100	113
3	Profit/Loss	₹/MT	(***)	(***)	(***)	(***)
	Trend	Index	(100)	(230)	(44)	(200)
4	PBIT	₹ lacs	(***)	(***)	(***)	(***)
	Trend	Index	100	318	31	246
5	Cash Profits	₹ lacs	(***)	(***)	(***)	(***)
	Trend	Index	(100)	(374)	(22)	(293)
6	ROCE	%	(***)	(***)	(***)	(***)
	Trend	Index	(100)	(413)	(59)	(371)

268. It is noted that the applicant's cost of sales has increased over the injury period except in 2020-21, wherein the cost of sales had declined. The applicant's selling price has also increased by 13 index points in the POI as compared to the base year and the previous year. However, the increase in selling price is not commensurate with the increase in the cost of sales. The applicant has been selling the subject goods at prices significantly below its cost of sales.
269. The applicant has been making losses throughout the injury period, and losses are at the second highest level in the POI. The applicant has incurred the highest losses in 2019-20. It is noted that the landed value of subject goods from the subject countries was at its lowest level during this period. PBIT and cash profits have followed the same trend as profits.
270. ROCE has significantly declined in the POI as compared to the injury period. The applicant has not been able to earn adequate returns.

K.7 Wages, Employment and Productivity

K.7.1 Submissions by the domestic industry

271. The following submissions have been made by the domestic industry:
- Number of employees have remained constant since FY 2019-20. Salaries and wages have increased only by 6 index points despite high inflation. Productivity per employee has decreased due to a decline in capacity utilisation.¹⁹⁸

¹⁹⁸ Para 52 of DOZCO's Written Submissions.

K.7.2 Submissions by the other interested parties

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

- a. The salary and wages have increased with the increase in the number of employees.¹⁹⁹
- b. The number of employees employed in chisel production increased during the intermediate year. However, the trend of salary has been irregular.²⁰⁰ The Authority must examine whether the data provided in the application is correct.
- c. The productivity of the applicant has increased.²⁰¹
- d. The applicant's productivity per day per employee has increased during the POI as compared to the base year.²⁰²

K.7.3 Examination by the Authority

273. The following table provides the domestic industry's trends pertaining to salary, wage and employment:

Table 23: Employment (Chisels)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Wages	₹ lacs	***	***	***	***
	Trend	Index	100	113	83	108
2	No. of Employees	Nos.	***	***	***	***
	Trend	Index	100	100	127	132
3	Productivity/day		***	***	***	***
	Trend	Index	100	98	92	80
4	Productivity/Employee		***	***	***	***
	Trend	Index	100	98	72	60
5	Wages/Employee	Rs./No.	***	***	***	***
		Index	100	113	65	82

¹⁹⁹ Para 35 of Hansung's Written Submissions.

²⁰⁰ Page 18 of Soosan's Written Submissions; Page 17 of Ningbo's Written Submissions; Page 18 of FEEL's Written Submissions:"

Particulars	Unit	2018-19	2019-20	2020-21	POI
No. of employees	Indexed	100	132	132	132
Salaries and Wages	Indexed	100	113	83	106

“

²⁰¹ Para 36 of Hansung's Written Submissions.

²⁰² Page 18 of Soosan's Written Submissions; Page 17 of FEEL's Written Submissions; Page 19 of DAEMO's Written Submissions; Page 18 of Ningbo's Written Submissions.

274. Wages have increased compared to the base year by 8 index points and in relation to 2020-21 by 25 index points. Total wages had significantly increased in 2019-20 but have declined thereafter. It is further noted that wages/employee remain significantly below the base year level. However, wages/employee has increased in relation to 2020-21. The applicant has explained that in the wake of COVID-19, the domestic industry had adopted cost-cutting measures.
275. The number of employees has increased over the year, after remaining constant for the base year and the year subsequent to it. However, there was an increase in employees thereafter.
276. The productivity per day has remained in the same range and has marginally declined. Similarly, the productivity/employee has significantly declined over the injury period and has reached its lowest level in the POI. It is noted that the decline in productivity parameters is primarily on account of the decline in production.

K.8 Inventories

K.8.1 Submissions by the domestic industry

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

- a. The applicant's inventories have increased in the POI.²⁰³

K.8.2 Submissions by the other interested parties

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

- a. Working capital and inventory have not moved in the same trend even though the two are directly interrelated.²⁰⁴

K.8.3 Examination by the Authority

279. The following table depicts the inventory levels of the domestic industry:

Table 24: Inventories (Chisels)						
S.No.	Particulars	UoM	2018-19	2019-20	2020-21	POI
1	Average Inventory	MT	***	***	***	***
	Trend	Index	100	112	126	123

²⁰³ Para 52 of DOZCO's Written Submissions.

²⁰⁴ Page 18 of Soosan's Written Submissions; Page 17 of FEEL's Written Submissions; Page 19 of DAEMO's Written Submissions; Page 18 of Ningbo's Written Submissions.

280. It is noted that inventory has increased over the injury period but has marginally declined in POI as compared to the previous year, but still remains significantly above the base year and subsequent year. It is noted that despite a significant decline in production over the years, applicant's inventories have continued to increase.

K.9 Growth

K.9.1 Submissions by the domestic industry

281. No contesting submissions have been made by the domestic industry.

K.9.2 Submissions by the other interested parties

282. No contesting submissions have been made by the other interested parties.

K.9.3 Examination by the Authority

283. The following table depicts the growth of the domestic industry:

Table 25: Growth (Chisels)						
S.No.	Particulars	UoM	2019-20	2020-21	POI	POI compared to the base year
1	Production	%	(***)	(***)	(***)	(***)
2	Domestic Sales	%	(***)	(***)	(***)	(***)
3	Profit/Loss	%	(***)	(***)	(***)	(***)
4	ROCE	%	(***)	(***)	(***)	(***)
5	Inventory	%	***	***	(***)	(***)
6	Market Share	%	(***)	(***)	(***)	***

284. From the above, it is noted that except inventory, all parameters of the applicant have declined over the injury period. All parameters except inventories also show a declining trend as compared to the base year. The domestic industry's parameters had improved during 2020-21 as compared to the previous year. It is noted that during this period the import volume of subject goods had declined, and landed value had also increased. However, with the increase in the imports of dumped volume, the domestic industry's performance has further declined.

K.10 Magnitude of dumping margin

285. As noted above, the dumping margin of the subject goods from the subject countries is above the *de minimis* limit and is significant. It is also noted that the dumping margin of

the cooperating producers from Korea RP (except Soosan) is above the *de minimis* limit and is significant.

K.11 Ability to raise capital investment

286. The applicant has submitted that due to the presence of dumped imports from the subject countries, it has been forced to sell below cost of sales and has therefore been making losses which has impacted its ability to raise capital investment for further expansion and diversification.

287. It is noted that with the continuous losses being suffered by the domestic industry, its ability to raise capital has been adversely affected. However, despite an increase in demand for the subject goods in the POI, the applicant's performance has deteriorated considerably, and thereby diminishing its ability to raise capital investments.

L CAUSAL LINK ASSESSMENT**L.1 Submissions by the domestic industry**

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

- a. The installed capacity remained constant throughout the entire injury period. There has also been only a marginal increase in the applicant's sales and production figures which is not proportionate to the growth in demand. The dumped imports command the majority share of the market for both rock breakers as well as chisels. The profitability parameters have been adversely impacted as a result of such dumped imports²⁰⁵
- b. Due to the increase in the quantity of dumped imports, the capacity utilisation has declined and the growth of the applicant in volume parameters²⁰⁶ has remained sub-optimal.²⁰⁷
- c. The domestic industry's prices have been suppressed by low-priced imports.
- d. The demand for the subject goods has remained high. There are no trade restrictive practices. The technology used to manufacture the product remains the same. There has been no material change in the consumption of the PUC.²⁰⁸
- e. The shutdowns carried out due to COVID-19 did not have a significant impact on the performance parameters of the applicant.²⁰⁹

L.2 Submissions by the other interested parties

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

- a. Any injury suffered by the applicant is due to factors other than subject imports from Korea RP. The Authority must examine other known factors in accordance with obligations under Art.3.5 of the WTO Agreement on Anti-dumping and Annexure – II of the AD Rules, 1995, to find the cause of the injury to the applicant.²¹⁰ The same standard has been upheld by the Appellate Body in *US – Hot – Rolled Steel*²¹¹ and the GATT Panel

²⁰⁵ Para 56 of DOZCO's Written Submissions; Para 60 of DOZCO's Written Submissions.

²⁰⁶ Para 60 of DOZCO's Rejoinder Submissions.

²⁰⁷ Para 56 of DOZCO's Written Submissions.

²⁰⁸ Para 57 of DOZCO's Written Submissions; Para 60 of DOZCO's Rejoinder Submissions.

²⁰⁹ *Id.*

²¹⁰ Page 21 of Soosan's Written Submissions; Page 21 of DAEMO'S Written Submissions.

²¹¹ Appellate Body Report, *United States – Anti – dumping Measures on Certain Hot-Rolled Steel Products from Japan* adopted 23 August 2001.

in *US – Norwegian Salmon*²¹². Accordingly, the Authority must distinguish the injurious effects of other known factors from the injurious effects of the dumped imports.²¹³ If the Authority concludes that there are factors other than imports from Korea RP, the Authority should terminate the investigation at its end.²¹⁴

- b. The domestic industry manufactures chisels (upstream product) as well as rock breakers (downstream product). The sales value and quantity of chisels sold by the applicant have declined, whereas it has increased for rock breakers. This clearly indicates sales substitution wherein the applicant is more focused on increasing the sales and value of the downstream product, i.e. rock breaker. The sales of chisels have declined as rock breakers are being sold as complete and fully assembled sets.²¹⁵
- c. The applicant has stated in its application that the Government of India has exempted imports of the subject goods for certain projects from basic customs duty. This exemption raises several issues i.e. whether there exists a demand-supply gap for the subject goods, supply-side issues, quality of the PUC manufactured by the domestic industry, and compatibility issues of the equipment.²¹⁶
- d. The applicant has failed to address several other factors such as depressed market conditions, subdued demand for the company's product, the impact of the pandemic as well as internal problems of the applicant which have played an important role in the deterioration of the applicant's performance.²¹⁷
- e. As the applicant has been a loss-making entity throughout the injury period, the Authority should examine other factors such as subdued demand for the applicant's product, post-sale service and guarantee and warranty services.²¹⁸
- f. The COVID-19 pandemic and the resultant lockdown is a widely known factor which demonstrates the absence of any causal relationship between the dumped imports and

²¹² Panel Report adopted by the Committee on Anti-dumping Practices, *United States – Imposition of Anti – dumping duties on imports of fresh and chilled Atlantic Salmon from Norway* (ADP/87) (adopted 27 April 1984).

²¹³ Para 23 of Soosan's Written Submissions; Page 23 of DAEMO's Written Submissions.

²¹⁴ Page 39 of Everdigm's Written Submissions.

²¹⁵ Page 42 of Everdigm's Written Submissions; Page 42 of D&A's Written Submissions; Page 23 of Everdigm's Rejoinder Submissions; Page 22 of D&A's Rejoinder Submissions.

²¹⁶ Page 43 of Everdigm's Written Submissions; Page 43 of D&A's Written Submissions; Page 23 of Everdigm's Rejoinder Submissions; Page 23 of D&A's Rejoinder Submissions.

²¹⁷ Para 23 of Soosan's Written Submissions; Page 13 of DAEMO's Rejoinder Submissions; Page 12 of FEEL's Written Submissions.

²¹⁸ Para 11 of Hansung's Written Submissions.

injury to the applicant. Global lockdown disrupted²¹⁹ the domestic as well as export²²⁰ market of hydraulic rock breakers²²¹.

- g. Despite the pandemic, all relevant economic parameters of the applicant have shown growth.²²²
- h. Other Indian manufacturers have not brought to the notice of the investigation. Such producers have not submitted their data, which indicates that they may not be suffering from injury at all. Therefore, any injury to the applicant is on account of its own inefficiencies or third factors.²²³

L.3 Examination by the Authority

290. Para (v) of Annexure – II to the AD Rules, 1995 requires the Authority to establish that the domestic industry is suffering injury due to the dumped imports. At the same, the Authority is required to examine factors other than the dumped imports that could have impacted the performance of the domestic industry so that the injury caused by other known factors is not attributable to the dumped imports of the subject goods. The relevant factors in this respect include the volume of subject goods not sold at dumped prices, contraction in demand or changes in the pattern of consumption, trade restrictive practices, changes in technology, the export performance of the domestic industry and the productivity of the domestic industry. The aforementioned factors have been examined below:

L.3.1 Volume of subject goods not sold at dumped prices

291. The volume of subject goods from the subject countries has been found to enter the Indian market at dumped prices. The magnitude of the dumping margin is above the *de-minimis* limit, except D&A, for all cooperating producers exporting rock breakers to India. The magnitude of the dumping margin is above the *de-minimis* limit for all cooperating producers, except Soosan, exporting chisels to India. Further, the volume of subject goods from the non-subject countries constitutes an insignificant percentage of the total volume of imports of the subject goods and are at prices higher than dumped imports from the

²¹⁹ <https://www.prnewswire.com/news-releases/hydraulic-hammer-market-to-reach-3-4-billion-globally-by-2031-at-5-6-cagr-allied-market-research-301655879.html> (as cited as footnote 17 of Everdigm's Written Submissions).

²²⁰ <https://www.marketwatch.com/press-release/mobile-hydraulic-rock-breaker-market-2022-key-product-segments-application-analysis-and-industry-growth-forecast-by-2028-2022-09-29> (as cited in Everdigm's submissions – at footnote 18).

²²¹ Page 40 of Everdigm's Written Submissions; Page 40 of D&A's Written Submissions; Page 22 of Everdigm's Rejoinder Submissions; Page 24 of D&A's Rejoinder Submissions.

²²² Page 40 of Everdigm's Written Submissions.

²²³ Page 43 of Everdigm's Written Submissions; Page 43 of D&A's Written Submissions; Page 23 of Everdigm's Rejoinder Submissions; Page 24 of D&A's Rejoinder Submissions.

subject countries.

L.3.2 Contraction in demand

292. It is noted that demand for the subject goods has increased over the injury period after a slight decline in 2020-21. The demand is at its highest level in the POI.
293. Soosan, DAEMO, FEEL and Hansung have argued that the applicant has not addressed the depressed market conditions and that the applicant's product has been facing subdued demand. The Authority disagrees with these submissions. As stated above, the demand for the subject goods has increased over the period of time and is at the highest level in the POI. In fact, the volume of imports from all cooperating exporters has increased in the POI. Further, the conditions of competition for the imported subject goods from the subject countries and the applicant are the same. Therefore, it cannot be said that the applicant has been facing subdued demand due to factors other than dumped imports.

L.3.3 Change in pattern of consumption

294. None of the interested parties has argued or brought forth any evidence which establishes a change in the pattern of consumption which could have impacted the performance of the domestic industry.

L.3.4 Trade restrictive practices

295. None of the interested parties have argued or brought forth any evidence regarding any trade restrictive practices that could have impacted the domestic industry's performance.

L.3.5 Development in Technology

296. None of the interested parties have argued or brought forth any evidence to demonstrate advancements in technology in the manufacturing of PUCs that could have impacted the performance of the domestic industry. The investigating team has found that the production process of the cooperative producers from China PR and Korea RP is similar to that of the applicant. It is, however, noted that some of the producers from Korea RP outsource the majority of the assembly and sub-assemblies manufacturing process in several instances.

L.3.6 Export performance of the domestic industry

297. As compared to previous years, the applicant's exports have declined. It is noted, however, that the applicant's export sales have always constituted a very insignificant percentage (less than 5%) of its total sales. Thus, the applicant's export performance has not impacted the

applicant's domestic sales performance.

L.3.7 Performance of other products of the domestic industry

298. It is noted that the applicant only manufactures the PUC as defined in the present investigation. The data pertaining to such products have not been used in the present investigation. Therefore, it cannot be said that the applicant's performance with respect to other products has impacted the production or sales of the like article manufactured by the applicant.

L.3.8 Productivity of the domestic industry

299. It is noted that the productivity of the applicant for chisels has remained in the same range over the injury period, including the POI. Even in the case of rock breakers, the applicant's productivity has remained in the same range. Therefore, the applicant's productivity cannot be considered as a factor impacting the performance of the domestic industry.

L.3.9 Sales Substitution

300. Everdigm and D&A have argued that the applicant's performance in chisel has declined because of its focus on selling fully assembled rock breakers (along with chisels). As mentioned above, the applicant records the sale of chisel separately in its sales register even if it is sold along with rock breakers. Therefore, the Authority does not agree with Everdigm and D&A's submissions.

L.3.10 Exemption of basic customs duty for certain projects

301. Everdigm and D&A have argued that the exemption of basic customs duty on the PUC for certain projects raises several questions pertaining to the existence of demand-supply issues and the quality of the PUC. It is noted that none of the cooperating producers have brought forth any evidence that establishes that the applicant's product is of inferior quality or adduced any evidence to demonstrate that the applicant does not provide effective after-sale service.

302. It is further noted that the existence of a demand-supply gap or exemption of basic customs duty for certain projects does not warrant dumping of the subject goods. The Authority, therefore, does not agree with the submission of the applicant.

L.3.11 Impact of COVID-19

303. It is noted that the demand in the POI has rebounded to pre-covid levels for both the subject goods, and therefore, it cannot be considered that COVID-19 has adversely impacted the

market.

L.3.12 Factors establishing Causal Link:

304. After examining the factors enumerated above, the Authority holds that the domestic industry has not suffered injury in the POI due to other factors. Further, the following factors show that the injury to the domestic industry is due to the subject imports:
- a. For rock breakers as well as chisels, the volume of dumped imports from the subject countries has increased in the POI as compared to the injury period in absolute terms as well as in relation to the production and consumption of the subject goods in India. As a consequence of such an increase in the volume of low-priced dumped subject goods, the domestic industry has not been able to sell the like article manufactured in significant quantities in the domestic market, nor has it been able to benefit from the growth in consumption.
 - b. For rock breakers as well as chisels, the applicant's capacities remain significantly underutilized.
 - c. Due to the low-priced imports of the subject goods from the subject countries, the applicant has been selling the like article manufactured by it below its cost of sales. As a result, the domestic industry has been forced to sell at losses.
 - d. The low-priced subject imports have depressed the prices of the like article manufactured by the applicant.
 - e. The adverse impact of the dumped imports on the selling price of the domestic industry has led to a significant loss, a decline in cash profit and a significant reduction in the return on capital employed.
 - f. The growth of the domestic industry has become adversely affected in respect of several economic parameters.
 - g. The incremental demand for the subject goods in the POI has been almost entirely captured by the imports from the subject countries, which has caused the applicant not to be able to take advantage of the growth in Indian demand.

M INJURY MARGIN

M.1 Submissions by the domestic industry

305. No contesting submissions have been made the domestic industry.

M.2 Submissions by the other interested parties

306. The following submissions have been made by the other interested parties:
- a. Eddie submits that the cost structure, as well as the manufacturing process of assemblies and sub-assemblies of rock breakers, is different from that of a fully assembled rock breaker. To ensure fair comparison, the Authority should not compare sub-assemblies separately from fully assembled rock breakers.²²⁴

M.3 Examination by the Authority

307. The Authority has determined non-injurious price (NIP) for the domestic industry on the basis of the principles laid down in Annexure III to the AD Rules, 1995, as amended. The NIP of the like article has been determined by adopting the information/data relating to the cost of production provided by the domestic industry for the period of investigation. For the determination of the non-injurious price, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with respect to utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses are charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III to the AD Rules, 1995.
308. The landed value for China PR has been determined by adding a 7.5 % basic customs duty and other applicable surcharges and cess to the CIF value of the subject goods. The landed value for Korea RP is the CIF Value for the subject goods.
309. Eddie has argued that the cost structure of assemblies and sub-assemblies is different from that of a fully assembled rock breaker. As has been clarified above, assemblies and sub-assemblies are nothing but a form of fully assembled rock breaker. It is further noted that assemblies and sub-assemblies compete in the same market as that of a fully assembled rock breaker. Therefore, separate computation of injury margin for assemblies and sub-assemblies is unwarranted.
310. The injury margin has been computed as the difference between the landed value of the subject goods and the non-injurious price of the like article manufactured by the domestic

²²⁴ Paras 89-90 of Eddie's Written Submissions.

industry.

N DETERMINATION OF INJURY MARGINS

311. Considering the landed value of the subject goods from the subject countries and the non-injurious of the like article manufactured by the domestic industry, the dumping margins are as follows:

INJURY MARGIN TABLE: Rock breaker						
SN	Producer	Non-injurious Price (USD/MT)	Landed Value (USD/MT)	Injury Margin (USD/MT)	Injury Margin (%)	Injury Margin Range
Korea RP						
1.	Soosan Heavy Industries Co., Ltd.	***	***	(***)	(***)	Negative
2.	Daemo Engineering Co. Ltd.	***	***	***	***	0-10
3.	FEEL Industrial Engineering Co. Ltd	***	***	***	***	0-10
4.	Hyundai Everdigm Corporation	***	***	***	***	20-30
5	D and A Heavy Industries Co., Ltd.	***	***	(***)	(***)	Negative
6	Any producer	***	***	***	***	50-60
China PR						
1.	Yantai Eddie Precision Machinery Co., Ltd.	***	***	***	***	130-140
2.	Ningbo	***	***	***	***	20-30

INJURY MARGIN TABLE: Rock breaker						
SN	Producer	Non-injurious Price (USD/MT)	Landed Value (USD/MT)	Injury Margin (USD/MT)	Injury Margin (%)	Injury Margin Range
	Yinzhou Get Machinery Ltd.					
3.	Any producer	***	***	***	***	160-170

INJURY MARGIN TABLE: Chisel						
SN	Producer	Non-injurious Price (USD/MT)	Landed Value (USD/MT)	Injury Margin (USD/MT)	Injury Margin (%)	Injury Margin Range
Korea RP						
1.	Soosan Heavy Industries Co. Ltd.	***	***	(***)	(***)	Negative
2.	HANSUNG SPECIAL MACHINERY CO., LTD	***	***	(***)	(***)	Negative
3	Any producer	***	***	***	***	10-20
China PR						
2.	Ningbo Yinzhou Get Machinery Ltd.	***	***	***	***	0-10
3.	Any producer	***	***	***	***	30-40

O POST DISCLOSURE EXAMINATION

312. The Authority circulated the disclosure statement containing all essential facts under consideration for making the final recommendations to the Central Government to all interested parties on 20th March 2024. The interested parties were directed to file their comments on the disclosure statement by 24th March 2024. None of the interested parties requested for additional time for submission of post-disclosure comments. The Authority has examined all post – disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority has not been repeated for the sake of brevity.

O.1 RE: The Product Under Consideration

313. DOZCO submitted that the Authority rightly defined the scope of the PUC. DOZCO stated that other jurisdictions also provide explanations to the scope of the PUC, which may give an elaborate list of items originally not defined. In the “*less than fair value investigation on Brass Rods exported from India*”,²²⁵ the USDOC had modified the scope of the PUC to include various items and types of products. DOZCO referred to the final scope ruling in “*Paper shopping bags exported from India*”,²²⁶ where the USDOC noted that it has significant discretion while determining the scope of the PUC, and it must provide ample deference to the applicant to clarify and identify the products for which it seeks or does not seek relief.

314. DOZCO has argued that in the present investigation, the Authority has merely provided clarification as to the scope of the PUC, which was part of the investigation *ab initio*. This is also similar to the USDOC practice in which the subject line is merely a brief of detailed explanation given later in the initiation notification.²²⁷ Accordingly, DOZCO requested the Authority to confirm the scope of the PUC as has been proposed in the disclosure

²²⁵ See Page 7 of the Preliminary Scope Determination issued by Department of Commerce, Less-Than-Fair Value Investigations of Brass Rod from Brazil, India, Israel, Mexico, the Republic of Korea, and South Africa and Countervailing Duty Investigations of Brass Rod from India, Israel, and the Republic of Korea, (A-533-916) Dated September 25, 2023; see also, *Mitsubishi Electric Corp. v. United States*, 898 F.2d 1577, 1583 (Fed. Cir. 1990) (Mitsubishi); see also Senate Report on Trade Agreements Act of 1979, S. Rep. No. 96-249 (1979) at 45 (stating that “domestic petitioners and the administrators of the law have reasonable discretion to identify the most appropriate group of products for purposes of both the subsidy and injury investigations”).

²²⁶ See Page 8 of the Less-Than-Fair Value and Countervailing Duty Investigations of Certain Paper Shopping Bags from Cambodia, the People’s Republic of China, Colombia, India, Malaysia, Portugal, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Final Scope Decision Memorandum, Dated March 11, 2024 (C-533-917).

²²⁷ Para 15 of DOZCO’s Comments on Disclosure Statement

statement.²²⁸

315. The Authority notes that through the Scope Notification the scope of the PUC was only clarified. The scope of the PUC remained the same as defined in the initiation notification.
316. Eddie submitted that the seven sub-assemblies identified by the Authority in the PCN notification dated 16th June 2023 cannot individually be identified as “forms” of hydraulic rock breakers. Eddie further submitted that the PUC defined by the Authority exceeded what was mentioned in the application. It was submitted that DOZCO, in its application, has not made any references to the apprehension of circumvention. Eddie submits that in the present case, neither the application nor the initiation notification mentions anything about the seven assemblies/sub-assemblies. Therefore, the decision of CESTAT in *Huawei*, *Merino Panel Products*, and *Intercontinental* are not applicable to the present case. It was submitted that in all investigations concerning capital goods, the PUC merely made references to CKD and SKD forms of the product but did not make references to individual parts or assemblies.
317. Eddie has further contended that the inclusion of the seven assemblies/sub-assemblies of rock breakers within the scope of the PUC was never intended by DOZCO in its application. DOZCO claimed that its imports accounted for less than *** % of the Indian demand – however, this claim is contrary to what DOZCO mentioned in its application, wherein it claimed to import low-value ‘parts of PUC’ during the POI. DOZCO intentionally made a false statement before the Authority that it did not import the PUC and only disclosed its imports once the other interested parties brought data and evidence regarding DOZCO’s imports.
318. The Authority notes that Eddie’s above contentions are a repetition of what it has stated in its written and rejoinder submissions. These arguments have been appropriately addressed in the relevant sections above.
319. Everdigm and D&A have re-iterated that the applicant only intended to include fully assembled hydraulic rock breakers in their application, and the PCN notification dated 16th June 2023 is an expansion of the original PUC defined in the initiation notification. It was further submitted that none of the investigations cited in the disclosure statement are instances where the scope of the PUC has been broadened. Everdigm and D&A further submitted that since the PCN notification dated 16th June 2023 was not a gazetted document, parties may not have been adequately notified of the same. Producers of the newly added products who may not have been interested in the investigation before have

²²⁸ Para16 of DOZCO’s Comments on Disclosure Statement.

not been sufficiently notified. They further submitted that as per the Manual of Operating Practices, the scope of the PUC is frozen at the stage of the initiation itself and cannot be modified thereafter.

320. The Authority notes that these arguments of Everdigm and D&A are a repetition of the arguments they made earlier, which are appropriately dealt with in the relevant section of this final finding.
321. Eddie additionally submitted that the standing of DOZCO must be assessed separately in relation to each and every individual item covered in the PUC separately.
322. The Authority notes that Eddie's argument is unsubstantiated. The PUC is defined as "*alloy steel chisel/tool and hydraulic rock breakers in fully assembled condition*" – the standing has been assessed on the basis of the PUC so defined. As is the consistent practice of the Authority, the standing of the domestic industry is required to be assessed in relation to the PUC as a whole and not for every assembly/sub-assembly of the PUC.
323. Eddie, Everdigm, and D&A submitted that rock breakers imported as spare parts or for replacement of parts of already imported rock breakers must be excluded from the scope of the PUC since parts of rock breakers are company and model-specific. This is also because the dimensions and specifications of parts of rock breakers are unique and specific to a particular brand. A user cannot replace parts of imported rock breakers with those manufactured by DOZCO. It was also submitted that if the Authority's intention was to cover imports of all 'forms' of imports hydraulic rock breakers (i.e., whether fully assembled or unassembled), then the Authority should not have any objection to the exclusion of imports of replacement parts since they cannot be regarded as imports of 'forms' of hydraulic rock breakers. Everdigm and D&A referred to the *anti-circumvention investigation concerning CR Flat Products of Stainless Steel from China PR, Korea RP, the EU, South Africa, Taiwan, Thailand and the USA*, where exclusion was granted on an end-usage basis:

The PUI which is imported by an importer for end use in the same form without slitting (except to the extent of tolerances as mentioned in the Custom Notification No. 61/2015-Customs (ADD) dated 11th December, 2015) will not be liable for payment of the applicable AD Duty as per Custom Notification No. 61/2015-Customs (ADD) dated 11th December, 2015."

324. Regarding imports of spare parts or parts used for replacement of rock breakers, the Authority notes that there is no reliable way to determine whether the goods are being imported for replacement. If the exemption is granted, parties may mis-declare or

misrepresent imports as replacement to evade the duties. The possibility of misuse of the exemption, if granted, cannot be ruled out. Therefore, the Authority has decided not to grant this exemption requested by Everdigm, D&A and Eddie.

325. Everdigm and D&A submitted that the assembly process of fully assembled hydraulic rock breakers involves technical and skilled workmanship, which adds substantial value to the end product. There is a value addition of above 40%.
326. The Authority notes that it has already addressed all arguments regarding the possibility of imminent circumvention in the relevant sections above. Everdigm and D&A have not offered any substantiated estimates of conversion costs and expenses associated with the assembly process of hydraulic rock breakers. Further, as already explained above, the Ld. CESTAT has held that it is within the purview of this Authority to include within the scope of the PUC parts of goods which if not included, would defeat the purpose of the levy.²²⁹
327. Everdigm and D&A submitted that the PUC is a capital good, which is sold in pieces and not in terms of its weight in Korea RP and worldwide; thus, no data in terms of weight is usually maintained by the Korean manufacturers. Everdigm and D&A also argued that in the absence of recorded data in terms of weight, a benchmark should have been provided to objectively convert data recorded in pieces into MT. Everdigm and D&A further submitted that “[a]t several points during the investigation, this request of a standard conversion methodology was officially made by the Respondent. However, such efforts elicited no response”. It was submitted that Everdigm and D&A attempted to convert the cost in terms of weight using the weight of the standard model measured at the time of the product development and that this data was filed under protest without agreeing to the objectivity of such data. It was further submitted that there may be customization requests from customers on the standard model, such as lubricant injection, change of design and materials of parts, etc., which would result in a change of actual weight of the product, vis-à-vis the weight of the product at the time of product development.
328. The Authority notes that the general statement that the PUC is “*sold in pieces and not in terms of its weight in Korea RP and worldwide*” does not seem appropriate. The import data as received from DG Systems clearly establishes that a significant share of import transactions, including transactions from Korea RP was reported in KGs. Thus, the claim that PUC is sold only in pieces and units is not apposite.
329. It is further noted that neither Everdigm nor D&A furnished any evidence on record to

²²⁹ *Intercontinental Oils and Fats Pte. Ltd. v. Union of India and Ors.*, Anti-Dumping Appeal No. 50228 of 2019; *Huawei Technologies and Ors. v. Designated Authority and Ors.*, Appeal No. AD/13/2012 (CESTAT).

establish that minor modifications such as lubricant injection and change in design led to any significant change in weight. The issue was also discussed extensively during remote verification. However, neither of the two exporters were able to substantiate their claims that the weight of the products exported by them was at variance with the weight of the standard models.

330. It is also noted that Everdigm and D&A had also adopted an incorrect approach in the declaration of weight in Appendix 3A as well as Appendix 4A. The weights reported by Everdigm and D&A were found to be at a wider variance than the weights reported for models on their website. The investigation team subsequently asked Everdigm and D&A to revise the same, and the revised submissions were taken on record.
331. Additionally, the Authority notes that in its “submission of comments on the PCN on behalf of D&A Heavy Industries” dated November 19, 2022, D&A specifically requested the Authority to consider weight as a parameter of the PCN:

It is our humble submission that the non-inclusion of weight and diameter as one of the characteristics in devising the PCN system for the purpose of the present investigation would defeat the requirement of conducting a fair comparison among the different types/ forms of the PUC. Accordingly, D&A humbly requests that breakers should be classified as ‘Heavy’ and ‘Others (=non-heavy breakers)’ basis their weight and diameter as a parameter while finalizing PCN methodology.

332. The arguments raised by D&A are difficult to appreciate in view of its initial submissions wherein it requested the Authority to frame a PCN system based on *inter alia* the weight of the product and has thereafter claimed that it does not maintain data in the form of weight. It is unclear to the authority as to how an interested party can suggest a parameter for formulating PCNs when it had no basis in its internal records to categorise the PUC on the parameter suggested by it. Interested parties should avoid from making such unstudied suggestions.
333. Given the apparent contradiction in the initial submission, statements thereafter made, the information provided in the response, (which D&A and Everdigm itself admitted that it was not entirely accurate), there were potential grounds to undertake appropriate substantive measures under Section N of the initiation notification. However, giving due deference to the concerns of D&A and Everdigm, the Authority deemed it fit to allow them to submit the revised information pertaining to weight, even though the initial response did not correctly identify the weight of the different rock breakers exported by D&A and Everdigm. In view of the above, the Authority rejects the arguments raised by D&A and

Everdigm as unsubstantiated and self-contradictory.

334. The Authority further notes that MT was the most appropriate unit of measurement in the instant investigation for the reasons outlined above. The Authority sees no reason to re-iterate the same in this post-disclosure analysis.

O.2 RE: Confidential information in the Disclosure Statement

335. Eddie submitted that the Authority has claimed excess confidentiality over landed value, C.I.F. import price, and dumping margin range of non-cooperating producers from China. It was submitted that as per Rule 7 and the judgments of the Hon'ble Supreme Court in *Reliance Industries Ltd. v. Designated Authority*²³⁰ and *Union of India v. Meghmani Organics Ltd. & Ors.*,²³¹ confidentiality is the prerogative of the parties and the Authority has no right to claim confidentiality in the proceedings.

336. The Authority notes that the C.I.F. import price, landed value, and dumping margin range of non-cooperating producers from China were inadvertently not mentioned in the disclosure statement. The same has been rectified in this finding. The Authority further notes that the non-disclosure of this information has not specifically prejudiced Eddie; the investigating team had promptly disclosed all information related to Eddie (landed value, C.I.F. price, etc.) to Eddie itself.

O.3 RE: Scope of the domestic industry and standing

337. D&A and Everdigm submitted that they had provided a list of PUC manufacturers to the Authority, showcasing that the DOZCO is not the sole producer of the PUC in India. However, the Authority has not examined the same.²³²

338. It is noted that D&A and Everdigm had merely provided a list of entities along with their websites. This list did not set forth any evidence regarding the production or capacity of these entities, nor did any of these entities participate in the present investigation. Even the website of these entities did not mention whether the PUC was manufactured by the entities or imported. Thus, there was no evidence to the contrary that DOZCO was the sole producer of the PUC. Accordingly, the Authority has determined the standing of the domestic industry based on the best information available.

339. The Authority further notes that D&A and Everdigm failed to provide even primary

²³⁰ (202) E.L.T. 23 (S.C.).

²³¹ 2016 (340) E.L.T. 449 (SC).

²³² Para 7 of D&A's Comments to Disclosure Statement; Para 7 of Everdigm's Comments to Disclosure Statement.

contact information of these alleged domestic producers to the investigation team. It is noted where an interested party disputes the existence of a fact, the burden of proof to establish the same rests on such interested party. The Authority cannot be obliged to chase every unsubstantiated claim or mere utterance by an interested party. In this regard, the Authority finds that D&A and Everdigm have failed to discharge the burden of proof. The Authority confirms DOZCO's status as the sole manufacturer of the PUC.

340. DOZCO has argued that the Authority has failed to record the names of user industries who have supported the domestic industry.²³³ It has argued that the same should be taken into cognisance as the user industry has mentioned explicitly that the Indian industry is not able to manufacture subject goods at competitive price due to the dumped imports.²³⁴
341. In this regard, the Authority recalls that information provided by supporters is used to determine the standing of the domestic industry. In the present case, no support letter has been filed on behalf of any other domestic producer. The 24 user industries have not provided any quantifiable information regarding the effect of imports. The letters of support filed by user industries are immaterial for deciding the standing of the industry. The Authority has, therefore, not considered the support expressed by the user industry. Nevertheless, the fact that the user industry has voiced support for the domestic industry has been recorded in the Indian industry issues section.
342. D&A and Everdigm have further argued that the standing of the domestic industry has to be each of the assemblies/sub-assemblies separately by taking into account the individual market share and commercial sales assemblies/sub-assemblies.²³⁵ It is noted that assemblies and sub-assemblies are imported into the country for being assembled into rock breakers and compete in the market as fully assembled rock breakers. Assemblies/sub-assemblies merely differ in form and compete with fully assembled rock breakers. Therefore, determining separate standing in relation to each of the assemblies/sub-assemblies would lead to unnecessary fragmentation of the PUC. Further, as stated above, the domestic industry does manufacture assemblies/sub-assemblies. DOZCO merely sells them in fully assembled condition. It would be imprudent to conclude that upon specific request by any customer, DOZCO could not supply assemblies/sub-assemblies to such a customer given the fact that fully assembled rock breakers, which DOZCO is already supplying in the market, are nothing but an assemblage of these assemblies/sub-assemblies.

²³³ Para II.2-4 of DOZCO's Comments to Disclosure.

²³⁴ *Id.*

²³⁵ Para 7 of D&A's Comments to Disclosure Statement; Para 7 of Everdigm's Comments to Disclosure Statement.

343. DOZCO has also explained apart from R&D purposes²³⁶, imports “*were made by the DI on account of urgent requirements for specialized forged and machined parts that could not be sourced from India owing to shortage of supply for these specialized forged and machined parts in India. Notably, these imports of PUC were used in the further manufacturing activities (like heat treatment, shot blasting and assembly into rock breakers) of like products by the DI and not resold to customers in the domestic market. The quantum of these imports is insignificant of the total production of PUC by the DI during the POI.*”²³⁷
344. Eddie submits that DOZCO fails to satisfy the requirements of Rule 2(b) of AD Rules, as it has imported the PUC. It has argued that rock breakers are capital goods and are sold in pieces/numbers. Considering the fact that the Authority has conducted the standing and injury analysis in previous cases²³⁸ of capital goods in units of numbers and not in metric tons, the Authority should adopt the same approach in the present case. Analyzing imports by DOZCO by comparing the weight of such imports in metric tons with the total demand in India and DOZCO’s total production and sales in metric tons would result in a skewed analysis and would be a mechanism to mask the imports by DOZCO for granting it the status of domestic industry in this investigation.
345. Eddie has further submitted that DOZCO has imported the following quantities of rock breakers:

Parts	Total Pieces
Back Head	***
Cylinder	***
Front Head	***
Hydraulic Body/Main Body	***
Piston	***
Other parts	***

346. Eddie has further submitted that DOZCO’s imports of assemblies/sub-assemblies should be compared only with DOZCO’s production of assemblies/sub-assemblies for determination of standing.²³⁹ Further, the imports of DOZCO should also be assessed in light of production and sales of DOZCO. DOZCO has sold only fully assembled rock breakers. The Authority has also observed that DOZCO has not sold assemblies/sub-assemblies of rock breakers. Therefore, the Authority must examine the numbers/pieces of

²³⁶ Para 20 of DOZCO’s Comments on Disclosure Statement.

²³⁷ Para 21 of DOZCO’s Comments on Disclosure Statement.

²³⁸ [Industrial Laser Machine and Wheel Loaders](#).

²³⁹ Para 39 of Eddie’s Comments on Disclosure Statement.

hydraulic rock breakers manufactured and sold by DOZCO during the POI and compare them with the number of assemblies/sub-assemblies imported by DOZCO during the POI. Only this will reveal whether DOZCO qualifies as a domestic industry under Rule 2(b) of the AD Rules. Eddie has further stated that the Authority cannot conclude on standing merely by comparing the weight of imported assemblies/sub-assemblies by DOZCO with the weight of its production, sales, and demand.²⁴⁰

347. It is noted that the Authority notified at the initiation stage that the unit of measurement for the present investigation is MT. It is further clarified that the standing of the domestic industry has been determined for the PUC as a whole, i.e., by taking into account the sales and production of chisels and rock breakers. It is noted that these products are used in the same market and are complementary to each other, therefore, standing of DOZCO has been determined by taking sales and production of chisels and rock breakers. In view of the above, the imports made by DOZCO represent less than 5% of its sales and production. Therefore, the Authority has considered that DOZCO fulfils the requirements Rule 2(b) of AD Rules.
348. It is further clarified that using pieces as units of measurement would lead to skewed analysis. Rock breakers consist of multiple assemblies/sub-assemblies. If each of the assemblies/sub-assemblies is treated as a single unit and fully assembled rock breakers are also treated as a single unit, it would unnecessarily distort the volume and price effect of imports. Thus, a simple "piece count" fails to capture these disparities, potentially misrepresenting the overall weight and economic impact of the imports. Metric tonnes provide a standardized unit for measuring the cumulative weight of imported rock breakers, regardless of their assembly state. This enables objective and accurate comparisons of import volumes across different categories (fully assembled vs. assembly/sub-assemblies). Using weight as the unit of measurement provides a more comprehensive distribution of the value of imports compared to using pieces as a unit of measurement. Thus, to prevent such distortion, a common factor of weight was adopted.
349. Eddie's assertion that standing for assemblies/sub-assemblies should be separately determined by comparing DOZCO's production of assemblies/sub-assemblies is also unwarranted. It is noted that DOZCO manufactures and sells fully assembled rock breakers. It would not be logical to exclude assemblies/sub-assemblies merely because DOZCO has not sold such assemblies/sub-assemblies in the market. DOZCO has been manufacturing and assembling sub-assemblies/assemblies into fully assembled rock breakers, which it subsequently sells in the market. Therefore, assemblies/sub-assemblies are being sold by DOZCO into the Indian market, although in the form of fully assembled rock

²⁴⁰ Para 41 of Eddie's Comments on Disclosure Statement.

breakers.

350. Eddie's insistence on commercial sales of rock breakers in the form of assemblies/sub-assemblies for DOZCO to qualify as domestic industry is therefore not appropriate as even the imported assemblies/sub-assemblies assembled into fully assembled rock breakers before being sold into the market. The Authority here recalls the observations in *Intercontinental*, wherein the Ld. CESTAT permitted the inclusion of parts of the PUC, even though the domestic industry in that case did not even have the capacity to manufacture the same in order to prevent circumvention of duties. It is further noted that separate determination of standing for assemblies and sub-assemblies in such an analysis is unwarranted as it would lead to unnecessary fragmentation of the PUC.
351. Eddie has further placed reliance on the judgement of the Hon'ble CESTAT in *Technova Imaging Systems*²⁴¹. As stated in the disclosure statement and the foregoing paras above, Eddie's reliance on *Technova* is misplaced. In the present investigation, the domestic industry has been selling the subject goods in the market in commercial quantities, albeit in a different form.
352. Eddie has submitted that DOZCO's operations are similar to that of FINE and FYN, two alleged domestic producers who have participated in the investigation. Eddie has claimed that, like DOZCO, FINE and FYN also import assemblies/sub-assemblies and assemble them into fully assembled rock breakers.²⁴² The Authority notes that FINE and FYN have not been excluded from the scope of eligible domestic producers merely because they have imported the PUC. Rather, FINE and FYN's claims could not be assessed as they have furnished only an importer questionnaire response instead of the response meant for other domestic producers. Therefore, the Authority is not in a position to determine their eligibility as producers of the PUC, and FINE and FYN have been accordingly, not treated as domestic producers of the PUC.
353. DOZCO has relied on the Report of the Panel in *EC – Salmon* to argue that FYN and FINE do not carry out substantial value addition and therefore, should not be considered as domestic producers.²⁴³
354. The Panel in *EC – Salmon* noted as follows:

“7.114. *The EC's assertion is difficult to square with the ordinary meaning of the term "produce". The verb "to produce" is defined, inter alia,*

²⁴¹ Para 42 of Eddie's Comments on Disclosure Statement.

²⁴² Para 43 of Eddie's Comments on Disclosure Statement.

²⁴³ Paras 23-24 of DOZCO's Comments on Disclosure Statement.

as "[b]ring (a thing) into existence" and "'bring into existence by mental or physical labour (a material object)"."²⁴⁴

355. DOZCO has argued that the term "bring into existence" signifies that a producer can be accredited with bringing something to existence only when there is substantial value addition. The Authority disagrees with such a broad interpretation. It is noted that neither the AD Rules nor the Anti-dumping Agreement consider any threshold of value addition for designating any manufacturer as a producer. The introduction of such a test might diminish the rights of interested parties or add onto obligations which do not currently exist under the AD Rules or the Anti-dumping Agreement. Furthermore, the test of substantial transformation would differ from industry to industry and on a case-to-case basis. However, given the fact that FYN and FINE have not been considered eligible domestic producers as they have not filed appropriate information, the Authority does not consider it necessary to examine this issue any further.

O.4 RE: Normal Value and Dumping Margins

356. DOZCO has stated that the Authority has taken a lenient approach towards exporters as the PCN notification was issued after a considerable lapse of time. According to DOZCO, this delay gave the other interested parties significant time to manipulate their responses.²⁴⁵

357. It is noted that the AD Rules do not provide any limitation beyond which PCN notification can be issued. The exercise of notifying PCNs is a complex task that has huge ramifications throughout the investigation and no straightjacket formula that is equally applicable in all investigations can be adopted. Further, DOZCO has merely expressed a possibility regarding the manipulation of data and has not pointed out any significant issue as to how such data was manipulated. It is noted that the investigating team has not found any such instances in the information provided by the cooperating exporters. Wherever the responses were not found to be sufficient, multiple deficiency letters were issued to the cooperating exporters to explain the deficiencies. Likewise, several opportunities were afforded to DOZCO to explain the issues in its application.

358. Hansung has submitted that the Authority has determined a positive dumping margin for Hansung. However, in light of the negative injury margin determined for Hansung and the Authority's consistent adherence to the lesser duty rule, Hansung is not filing any

²⁴⁴ Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, [WT/DS337/R](#), adopted 15 January 2008.

²⁴⁵ Paras 5-6 of DOZCO's Comments on Disclosure Statement.

comments on the dumping margin determined by the Authority.²⁴⁶

359. D&A has submitted that it accepts the dumping margin determined by the Authority and requests the same to be confirmed for final findings.²⁴⁷ DOZCO has requested the Authority to reject D&A's questionnaire response as its related party Epiroc Mining India has not filed the importer questionnaire response.²⁴⁸
360. The Authority notes that D&A has not exported any of the subject goods to Epiroc Mining India during the POI. Thus, Epiroc Mining India has not been part of the import chain during the POI or during the injury period. The same has been confirmed from the DG Systems data as well as from the records provided by D&A. Accordingly, the Authority considers that in filing or not filing of questionnaire response by Epiroc Mining India would not make material impact on this investigation.
361. Everdigm has contended that non-determination of cost of production ("COP") for assemblies/sub-assemblies significantly undermines the reliability of the determinations based on COP. Thus, determinations for the PCN categories "HRB-D1" and "HRB-D3" were improper²⁴⁹. Furthermore, if information pertaining to sub-assemblies/assemblies are incorporated into calculations, the Authority should utilize the COP claimed by Everdigm. It is clarified that the COP of Everdigm for assemblies/sub-assemblies has been determined based on the information provided by Everdigm.
362. Everdigm has also contested the COP determined for the PCN categories "HRC". It was submitted that impairment losses have been included in COP determination. Unlike indirect selling general and administrative overheads, which are typically managed on a holistic basis without divisional differentiation and are allocated to PUC using an allocation ratio, impairment losses on tangible and intangible assets are regulated by accounting standards. Impairment losses are assessed once a year based on the accounting settlement date, the end of each year, considering the business performance of the asset use sector and reflected in the financial statements. The impairment losses are recognized in advance as accounting losses due to a reduced possibility of generating profits using the assets. In other words, it is an adjustment that reflects losses estimated to occur in the future in accounting. In other words, these are not costs actually incurred in the past, including during the period of investigation. The assessment of impairment losses calculated differently varies depending on the business sector utilizing the assets. In this case, the attachment division

²⁴⁶ Paras 2-4 of Hansung's Comments on Disclosure Statement.

²⁴⁷ Para 8 of D&A's Comments on Disclosure Statement.

²⁴⁸ Para 37 of DOZCO's Comments on Disclosure Statement.

²⁴⁹ Para 8 of Everdigm's Comments on Disclosure Statement.

has shown profitability, thereby precluding the occurrence of impairment losses in this division. In light of the foregoing arguments, the Everdigm urges the Authority to reconsider its approach²⁵⁰.

363. Everdigm's has submitted that its landed value and net export price is also at variance despite the Authority acknowledging that all adjustments claimed by Everdigm have been allowed. It has stated that certain trading items may not have been excluded by the investigating team. In view of the above, the Authority was requested to revisit its export price determination.²⁵¹ It has also stated that in view of the concerns expressed in the calculation of COP, normal value and export price, dumping margin should be re-assessed.²⁵²

364. As regards Everdigm's submissions on impairment losses on assets factored into the costs of the PUC, even though it is unrelated to the attachment division responsible for producing and selling PUC, it is noted that during the process of desk verification, the respondent never raised this issue. This issue was specifically brought to the notice of the Authority only at the stage of post-disclosure. It is also noted that during verification, Everdigm claimed that they do not maintain separate trial balances and financial statements for the plants where the PUC is manufactured. On a detailed examination of the questionnaire response submitted by the respondent, it is seen that impairment losses on assets are grouped under indirect selling and administrative overheads, whereas similar common expenses are also grouped under the same heading. Everdigm has not submitted evidence supporting every item grouped under the indirect selling and administrative overheads either in the detailed questionnaire response or at the time of desk verification. In view of the above, the Authority has considered the total indirect selling and administrative expenses, including impairment losses for the company as a whole as claimed by the respondent and appropriately allocated to the PUC and NPUC as per the standard acceptable principles for determination of cost of production, which Everdigm agreed upon at the time of desk verification. Hence, raising a novel issue post-disclosure, which hitherto was neither discussed nor verified, cannot be accepted by the Authority at such a belated stage.

365. As regards the export price of Everdigm, it is noted that all adjustments claimed by Everdigm have been appropriately adjusted. The variance in export price was on account of incorrect weight provided earlier by Everdigm. Subsequently, export price has been rectified in the final findings based on the revised weights provided by Everdigm. Accordingly, dumping margin for Everdigm has been appropriately adjusted.

²⁵⁰ *Id.*

²⁵¹ Para 9 of Everdigm's Comments on Disclosure Statement.

²⁵² Para 10 of Everdigm's Comments on Disclosure Statement.

366. FEEL has submitted that it agreed with the conclusions drawn by the Authority in the disclosure statement and requested the Authority to issue final findings based on the dumping/injury margin determined at the stage of the disclosure statement.²⁵³ It is, however noted that a calculation error occurred in determining the injury margin of FEEL. While computing the injury margin for FEEL, the basic customs duty (“BCD”) amount was added to the C.I.F. import price, even though imports from Korea RP are exempt from payment of BCD pursuant to the India-Korea CEPA. Since the BCD was added to the C.I.F. import price, a higher landed value was arrived at, thereby resulting in a negative injury margin. Accordingly, landed value has been re-determined for FEEL by excluding the amount of BCD. FEEL has been informed of these changes through a limited confidential disclosure. The injury margin for FEEL has been accordingly revised.
367. Soosan has agreed with the conclusions drawn by the Authority in the disclosure statement and requested the Authority to issue final findings based on the dumping/injury margin determined at the stage of the disclosure statement.²⁵⁴
368. DAEMO has submitted that the Authority has determined a higher cost of production and normal value than what was claimed by DAEMO in its questionnaire response. As per DAEMO’s information based on market intelligence, DAEMO’s export price is comparable to that of other exporters from Korea RP who got a negative injury margin. *A fortiori*, DAEMO’s injury margin should also be negative, as has been worked out for other cooperating exporters from Korea RP.²⁵⁵
369. The Authority notes that the confidential working of the landed value was provided to DAEMO. DAEMO has not brought any evidence forward to contest the same apart from merely stating that its injury margin should be negative as has been determined for other exporters. It is, however, noted that a calculation error occurred in determining the injury margin of DAEMO. While computing the injury margin for DAEMO, the basic customs duty (“BCD”) amount was added to the C.I.F. import price, even though imports from Korea RP are exempt from payment of BCD pursuant to the India-Korea CEPA. Since the BCD was added to the C.I.F. import price, a higher landed value was arrived at, thereby resulting in a negative injury margin. Accordingly, landed value has been re-determined for DAEMO by excluding the amount of BCD. DAEMO has been informed of these changes through a limited confidential disclosure. The injury margin for DAEMO has been accordingly revised.

²⁵³ Page 2 of FEEL’s Comments on Disclosure Statement.

²⁵⁴ Page 2 of Soosan’s Comments on Disclosure Statement.

²⁵⁵ Page 2 of DAEMO’s Comments on Disclosure Statement.

370. It is further noted that DOZCO has contended that DAEMO's related party in India, DAEMO Engineering India Limited, has not participated in the present investigation and, therefore, its response should be rejected.²⁵⁶ It is noted that DAEMO had accepted in its questionnaire the existence of its related entity in India. Subsequent clarifications were sought regarding DAEMO's related entity through deficiency questionnaires. It is further noted that DAEMO did not export the PUC during the investigation to DAEMO India, and therefore, DAEMO India has not filed a response to the questionnaire. The Authority has also verified this with the DG systems data. There is only one transaction pertaining to the PUC, which was exported by DAEMO before the commencement of the POI but whose bill of entry was filed in April 2021, i.e. during the POI. For the abovementioned reasons, the Authority considers that there was no deficiency in the export chain of DAEMO and therefore, its response has not been rejected.
371. Ningbo has submitted that the injury margin range for rock breakers and chisels is in the same range for participating as well as the residual category of exporters. It is requested that the Authority should grant the cooperating exporters a lower margin as compared to the residual category.²⁵⁷ Eddie has also raised similar concerns.²⁵⁸
372. The Authority notes that determining the dumping margin and injury margin is a mathematical exercise based on import data provided by participating exporters or the import data available with the Authority. Suppose the extent of dumping by a particular exporter is higher than that of the rest of the exporters. In that case, there is no reason why such a particular exporter should not be awarded a higher margin. Although this Authority intends not to reward non-cooperation, the scientific computation of margins does not grant much discretion. Nevertheless, in the present investigation, it is noted that the duties of cooperating producers from China PR and Korea RP are below the margins of the residual category.
373. DOZCO has stated that the disclosure statement did not clarify the basis of the price paid or payable in India. DOZCO has requested that the domestic industry's actual production cost be considered for the fixation of normal value and not the national cost. There is no basis to assume that the producers in the subject country are operating under the best circumstances. This approach would favour the exporters. The average cost of production of the domestic industry should be considered. Further, and in any case, consideration of the lowest NIP is done without legal basis. Instead, the Authority should adopt the highest

²⁵⁶ Para 38 of DOZCO's Comments on Disclosure.

²⁵⁷ Page 2 of Ningbo's Comments on Disclosure Statement.

²⁵⁸ Paras 50-51 of Eddie's Comments on Disclosure Statement.

cost of production.²⁵⁹

374. DOZCO has also submitted that the present range of dumping margin determined for exporters from China PR by the Authority is not in line with the consistent practice of DGTR. Accordingly, DOZCO has requested the Authority to re-determine margins for exporters from China PR.²⁶⁰
375. As regards the construction of normal value for China PR, it is stated that China has not claimed market economy status; the Authority has no option but to resort to paragraph 7 of Annexure I to AD Rules for constructing the normal value for producers/exporters from China PR. The Authority has determined China PR's normal value as a non-market economy country, considering the price 'actually paid or payable in India' for the like product, duly adjusted, to include a reasonable profit margin.

O.5 RE: Injury Analysis

376. Everdigm has re-iterated that the cylinder, piston, front head, back head, bracket, and frame are separate products with different product characteristics, end uses, and prices. This requires an individual injury and dumping analysis for each assembly/sub-assembly. The current analysis by the Authority is against the principles of objectivity enshrined under Rule 11(2) of AD Rules and Art. 3.1 of the Anti-dumping Agreement.²⁶¹
377. Everdigm's contentions remain unsubstantiated. As stated in the preceding paragraphs, the imported assemblies/sub-assemblies have no end use other than being assembled into fully assembled rock breakers. Everdigm has not presented any evidence contrary to this examination. The assemblies/sub-assemblies may individually differ in characteristics from each other or in relation to a fully assembled rock breaker. However, the fate of each of these assemblies/sub-assemblies (i.e. the end use) is to become a fully assembled rock breaker. There is no other intermediate use of such assemblies/sub-assemblies. Further, there is no independent use of these assemblies/sub-assemblies, i.e. a cylinder would not have any independent function if it does not become part of a hydraulic unit.
378. Everdigm has further contended that each of these components is manufactured separately, and each of them is an input material for a fully assembled rock breaker.²⁶² It is noted that the manufacturing process of rock breakers differs from producer to producer. While some producers may manufacture it from scratch, i.e. melting and forging raw steel, others may

²⁵⁹ Para 34 of DOZCO's Comments on Disclosure Statement.

²⁶⁰ Para 35-36 of DOZCO's Comments on Disclosure Statement.

²⁶¹ Para 12 of Everdigm's Comments on Disclosure Statement.

²⁶² Para 12 of Everdigm's Comments on Disclosure Statement.

use sourced assemblies/sub-assemblies to assemble it. Thus, what is considered an input material would differ from case to case. However, regardless of which base input material is used in the production, the end product is a rock breaker. Assemblies/sub-assemblies do not have any independent existence. Accordingly, the Authority has considered the volume of assemblies and sub-assemblies together in injury analysis.

379. Everdigm has relied on this Authority's investigation in *Anti-Dumping investigation concerning the imports of Rubber Chemicals viz. MBT, CBS, TDQ, PVI, and TMT from China and PX-13 (6PPD) from China and Korea RP* to argue for separate examination of each of the assemblies and sub-assemblies.²⁶³ Eddie has also argued that as each assembly/sub-assembly requires different moulding, heat treatment and raw materials. Therefore, each one of them has different cost structure. Accordingly, injury analysis and margins for assemblies/sub-assemblies should be assessed separately.²⁶⁴
380. Everdigm's reliance on the aforementioned case is misplaced. The Authority had conducted the examination of different kinds of rubber chemicals, which differed in chemical composition and other physical characteristics. However, as those chemicals were broadly categorised in the industry as rubber chemicals and the fact that the applicant was suffering injury on all the named chemicals, the Authority conducted a single investigation. However, given the variation in the production process and properties of the chemicals, a separate standing and injury assessment was carried out.
381. The facts of the present investigation are antipodal to *Rubber Chemicals*²⁶⁵. Unlike *Rubber Chemicals*, the assemblies/sub-assemblies and fully assembled rock breakers are made from the same raw material. The difference in physical characteristics of assemblies/sub-assemblies is of a temporary nature, and these differences exist only in form for convenience of transportation. Assemblies/sub-assemblies are imported/manufactured to be transformed into fully assembled rock breakers. This process of transformation does not entail any metallurgical process which could change or lend new chemical properties to fully assembled rock breakers. As soon as assemblies/sub-assemblies are assembled into fully assembled rock breakers, the physical differences in form between assemblies/sub-assemblies disappear.
382. It is further noted that even though the assemblies/sub-assemblies have different cost structures individually, Eddie ignores the fact that all such cost structures, moulding

²⁶³ Id.

²⁶⁴ Paras 44-45 of Everdigm's Comments on Disclosure Statement.

²⁶⁵ Final Finding [F.No. 14/5/2007-DGAD](#) *Anti-Dumping investigation concerning the imports of Rubber Chemicals viz. MBT, CBS, TDQ, PVI, and TMT from China and PX-13(6PPD) from China and Korea RP* dated 1st October 2008.

processes, etc., form part of an assembled rock breaker. Thus, all characteristics of assemblies/sub-assemblies are indeed subsumed and reflected in fully assembled rock breakers. Further, even at the cost of re-iteration, it is pointed out that assemblies/sub-assemblies and fully assembled rock breakers compete in the same market. Accordingly, there is no need to assess injury of assemblies/sub-assemblies separately.

383. Everdigm has requested the Authority should exclude the volume of Soosan, D&A and FEEL from the volume of dumped imports.²⁶⁶
384. It is clarified that the volume of Soosan and D&A has been excluded from the volume of dumped imports since the dumping margin for these exporters was determined to be negative, based on the information filed by them in their responses. The volume of FEEL has not been excluded, as the dumping margin for FEEL is positive.
385. D&A has submitted that the indexed figures of economic parameters showcase a positive and increasing trend in the POI compared to the base year. This establishes no injury to the domestic industry due to alleged dumping.²⁶⁷
386. It is noted that D&A is effectively arguing for an end-to-end comparison of the relevant parameters without considering the relevant intervening trends in the injury period. The same would present a distorted and skewed injury analysis, and therefore, the Authority disagrees with the submissions of D&A.
387. DOZCO has stated that the Authority has not provided non-dumped figures for the injury period.²⁶⁸
388. It is clarified that the dumping margin is determined only for the POI. Accordingly, the quantum of non-dumped imports cannot be stated in the appropriate table for the periods prior to the POI.
389. DOZCO has requested that the Authority hold that imports from the subject countries have remained significantly high in relation to India's production, consumption, and demand. DOZCO has further submitted that imports are undercutting its prices, thereby preventing them from increasing. There is only a marginal rise in the production and sales of the domestic industry. Further, domestic industry sales have not increased in proportion to the increase in demand, indicating that exporters and producers are engaged in unfair

²⁶⁶ Para 13 of Everdigm's Comments on Disclosure Statement.

²⁶⁷ Para 8-9 of D&A's Comments on Disclosure Statement; Paras 14-15 of Everdigm's Comments on Disclosure Statement.

²⁶⁸ Para 54 of DOZCO's Comments on Disclosure Statement.

trade practices. The domestic industry has been unable to increase its capacity utilisation and has been earning negative returns. All profit parameters have declined.²⁶⁹

390. The Authority notes that DOZCO has re-iterated its submissions regarding injury parameters. These submissions have already been addressed in the injury examination section above.
391. DOZCO has submitted that there are no factors other than dumped imports which have caused injury to the applicant.²⁷⁰
392. Everdigm has argued that other Indian manufacturers have not been put to notice regarding the initiation of the investigation and have not submitted data which indicates that they may not be suffering from injury, which clearly establishes a break in causal link.²⁷¹
393. It is clarified that the Authority had issued a public notice regarding the initiation of the investigation. However, none of the alleged producers participated in the investigation. The Authority has, therefore, carried out its examination based on the best information available.

O.6 RE: Non-Injurious Price

394. DOZCO has submitted that the Authority has calculated the NIP based on the cost audit report submitted for the POI by the applicant, which disregards the detailed submissions on record substantiating the total cost of production and corporate centralized overheads. The present data upon which the NIP has been computed has been based on a different set of information, i.e. the cost audit report. Accordingly, DOZCO requests the Authority to compute the NIP based on the following information:

Particulars	Rock breakers	Chisels
	INR/MT	INR/MT
Optimum Cost of Raw Materials Consumed	***	***
Cost of Primary Packing Materials Consumed	***	***
Consumable stores and spares	***	***
Optimum Cost of Utilities consumed	***	***
Salaries & Wages	***	***
Depreciation and Amortization expenses	***	***

²⁶⁹ Para 55 of DOZCO's Comments on Disclosure Statement.

²⁷⁰ Para 56 of DOZCO's Comments on Disclosure Statement.

²⁷¹ Para 16 of Everdigm's Comments on Disclosure Statement.

Other Manufacturing Overheads*	***	***
Other Administration Overheads*	***	***
Selling & Distribution Overheads (allowable)*	***	***
Selling Overheads (non-allowable like Commission, Freight, Discount, Export- related expenses etc.)		
Other/ Miscellaneous Expenses*		
Other Income*	(***)	(***)
Total Cost of Sales excluding Finance Cost	***	***
Return towards Finance Costs (Actual)	***	***
Return towards Pre-tax Profit (Balance of 22% ROCE)	***	***
Non-Injurious Price	***	***

395. DOZCO has further submitted that even in the alternative if NIP is calculated based on the cost audit report, it would also yield a higher NIP than the presently disclosed NIP. DOZCO requests the Authority to reconsider the raw material cost and increase it to the following numbers per MT:

Particulars	Amount as per Cost Audit Report	Reference
Cost of Raw Materials Consumed	***	A
Change in inventories of materials	***	B
Less: Scrap Sales as per Ledger Account	***	C
Cost of Raw Materials Consumed (Net of Scrap Sales)	***	D = A +B + C

Particulars	Rock breaker	Chisel	NPUC	Total
Production Value Ratio (D)	***	***	***	***
Production Quantity (E)	***	***	***	***
Cost of Materials allocated in the ratio of Production Value (INR): F=E*D	***	***	***	***
Cost of Materials allocated in ratio of Production Value	***	***	***	***

Particulars	Rock breaker	Chisel	NPUC	Total
(INR/MT) G=F/E				

396. As regards DOZCO's disagreement regarding the methodology of computation of NIP, it is clarified that generally, the Authority determines the NIP based on the cost of production and cost to make and sell the subject goods in India as per the information furnished by the domestic industry based on Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules. However, in this case, during verification, it was found that there is a substantial difference between the total cost of the manufacturing division of the company manufacturing PUC/NPUC as claimed in the application and the abridged cost statement of the cost audit report for the financial year 2021-22. The domestic industry explained that the difference was due to the fact that certain common costs of the company had not been considered by the cost auditor in his report. It is seen in para 3(c) of the cost audit report of 2021-22 that centralised expenses incurred through the corporate office are charged to administration overheads, which are allocated/apportioned to cost objects/individual products on an equitable basis, which seems to be contradictory. Therefore, the Authority felt it appropriate to allow the total cost for the manufacturing division as per the total cost given in the abridged cost statement of the cost audit report of 2021-22, duly adjusted with the scrap realised value, and accordingly, NIP has been determined.
397. DAEMO, Ningbo, and Soosan submit that the Authority must not consider a rate of 22% return on capital employed ("ROCE") for determining the non-injurious price (NIP). This has resulted in a highly inflated, non-injurious price, which is not based on practical considerations. The 22% ROCE was designed in 1987 when all parameters like interest rate and corporate tax were different from the prevailing rates. Further, in the case of *Bridgestone Tyre Manufacturing & Ors. v. Designated Authority*, the Ld. CESTAT observed that the price of 22% ROCE adopted by the Authority is not correct.
398. The Authority notes that adopting a rate of 22% ROCE has been a standard practice of the Authority in all anti-dumping investigations. Further, the Authority notes that the other interested parties have misrepresented the observations of the Ld. CESTAT. In *Bridgestone*, the Ld. CESTAT did not hold that 22% ROCE is a wrong consideration while determining the NIP. The Ld. CESTAT's observations in *Bridgestone* were regarding the consideration of 22% ROCE while determining price underselling. The decision in *Bridgestone* was issued prior to the introduction of Annexure-III to the AD Rules. Therefore, the reliance of the other interested parties on the case of *Bridgestone* to contend that 22% ROCE is high while

computing the NIP is unfounded. In the subsequent case of *Merino Panel Products*, the learned CESTAT has upheld DGTR's practice of granting 22% ROCE.

399. DAEMO has requested imposition of anti-dumping duties on *ad valorem* basis as there are several grades within the PUC as well as there is considerable price variation within the scope of the PUC.²⁷²
400. The Authority agrees with the submissions of DAEMO and would be recommending the imposition of anti-dumping duties on an *ad valorem* basis.
401. DAEMO has stated that since the Authority has not separately determined the dumping and injury for assemblies/sub-assemblies of rock breakers, it is requested that the Authority clarify the rate of duty which shall be applicable if a producer exports assemblies/sub-assemblies to India.²⁷³ Eddie has also claimed for a separate set of anti-dumping duties for assemblies/sub-assemblies and fully assembled rock breakers. Eddie has also argued that assemblies/sub-assemblies are also imported as spare parts to replace worn out parts. Thus, assemblies and sub-assemblies target a different market segment and have independent demand from hydraulic rock breakers.²⁷⁴
402. In this regard, it is noted that as assemblies/sub-assemblies of rock breakers are nothing but a different form of rock breakers, duties applicable to rock breakers shall be applicable to such assemblies/sub-assemblies. Further, the Authority has recommended duties on an *ad valorem* basis, and thus, accordingly, duties would be applicable based on the value of the product. Accordingly, duties paid would be higher in the case of fully assembled rock breakers, as it would have a higher C.I.F. value, and duties paid shall be lower in case assemblies/sub-assemblies, as it would have a lower C.I.F. value.
403. For the sake of maintain uniformity in DUTY TABLE and the convenience of the customs authorities, the DUTY TABLE includes recommended duties for hydraulic rock breakers as well as chisels for each of the participating exporters.

²⁷² Page 2 of DAEMO's Comments on Disclosure Statement.

²⁷³ Page 3 of DAEMO's Comments on Disclosure Statement; Page 2-3 of Soosan's Comments on Disclosure Statement.

²⁷⁴ Paras 45-48 of Eddie's Comments on Disclosure Statement.

P INDIAN INDUSTRY ISSUES**P.1 Submissions by the domestic industry**

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

- a. The arguments presented by FINE and FYN regarding adverse implications on the user industry are not substantiated with any evidence. No user industry has stepped forward to assert the same. *Per contra*, several users have stepped forward to support imposition of anti-dumping duties.²⁷⁵
- b. There has been no objection to the levy of anti-dumping on the subject goods. In fact, user industry has come forward to support imposition of anti-dumping duties.²⁷⁶ Several infrastructure and construction activities are in the pipeline.²⁷⁷
- c. Subject goods will enter into the Indian market at fair prices upon levy of anti-dumping duties. Imposition of duties would be in furtherance of *atmanirbhar bharat* objective of the Government.²⁷⁸

P.2 Submissions by the other interested parties

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

- a. The applicant has asserted that Indian industry would benefit from the imposition of anti-dumping duties. The applicant has also claimed that imposition of anti-dumping duties is necessary in view of the increased demand in the construction and infrastructure activities. Eddie submits that in view of the increased demand imposition of anti-dumping duties would be entirely unnecessary.
- b. DOZCO's production capacity is restricted at 1,840 MT for hydraulic rock breakers and at 5,000 MT for chisels whereas the Indian demand for hydraulic rock breakers is approximately 22,000 MT and for chisels approximately 12,000 MT. Thus, imposition of anti-dumping duties would exacerbate the demand-supply gap.²⁷⁹

P.3 Examination by the Authority

406. Trade remedial investigations are intended to restore equal competitive opportunities in the

²⁷⁵ Para 66 of DOZCO's Rejoinder Submissions.

²⁷⁶ Exhibit-3 to DOZCO's Written Submissions.

²⁷⁷ Page 33 of DOZCO's Written Submissions.

²⁷⁸ Page 34 of DOZCO's Written Submissions.

²⁷⁹ Para 69-70 of Eddie's Rejoinder Submissions.

domestic market by ensuring a level playing field for domestic producers by the imposition of appropriate duties against trade distorting imports. At the same time, the Authority is aware that the impact of such duties is not limited to only the domestic producers of the PUC but also affects the users and consumers of the PUC. Moreover, the imposition of duties may introduce competition concerns domestically but can concurrently stimulate the emergence of new producers within the country.

407. It is noted that multiple end users have participated in the investigation, notably JCB India and VOLVO CE, who are amongst the largest importers of the PUC from the subject countries. However, none have filed the economic interest questionnaire or made any legal submissions objecting to the imposition of duties.
408. Additionally, the Authority has received correspondence from 24 user industries. These industries contend that the availability of domestically manufactured PUCs is vital because they can be readily serviced, and parts or replacements are accessible at reasonable prices. They assert that producers from China PR and Korea RP impose high prices for parts, thereby impeding their operations.
409. It has also been asserted by these users that Indian manufactured products are superior in quality compared to imports from China PR and Korea RP. However, it's important to note that no technical evidence has been submitted to substantiate this claim.
410. FINE and FYN have submitted economic interest questionnaires and have estimated an impact of a 7%-8% increase in costs on the imposition of 10% of anti-dumping duties. However, they have not estimated the effect of such duties on the end user and whether the increase in costs due to the anti-dumping duties could be passed on to the end user or absorbed by the downstream industry.
411. Eddie submitted that in view of the increasing demand in the mining and construction sector, anti-dumping duties should not be imposed. Eddie also pointed out the limitation of the domestic industry's ability to fulfil the Indian demand. Eddie has argued that demand for rock breakers has increased by 227% compared to the base year in the POI. DOZCO's capacity for rock breakers is limited to *** MT, as they have admitted in the oral hearing, whereas the Indian demand is almost five times. The imposition of anti-dumping duties would merely increase the demand-supply gap.²⁸⁰
412. The Authority notes that the demand-supply gap in the country does not bar the domestic industry from seeking redressal from dumped imports. As held by the CESTAT in

²⁸⁰ Para 49 of Eddie's Comment on Disclosure Statement.

the *DSM Idemitsu Limited vs. Designated Authority*, the demand-supply gap does not justify dumping. Foreign producers can always meet the Indian demand by selling the product at un-dumped prices.

413. The Authority notes that the existence of a demand-supply gap cannot be a justification for not correcting distorted prices. The objective behind the imposition of anti-dumping duties is not to restrict the export of subject goods but only to correct the trade distortion in the least restrictive manner. Further, the purpose of anti-dumping duties is not to prevent or restrict imports but merely to ensure a level playing field and to address unfair competition. The proposed measures would promote fair trade conditions in India.
414. DOZCO has argued that low prices imports are threatening the existence of the only Indian manufacturer. DOZCO has further pointed out that the Authority should not ignore the fact that the shutdown of the only Indian manufacturer will have catastrophic effect on the end user, triggering cyclic effect.²⁸¹ In the event consumers become completely import reliant, they will be forced to follow the foreign producers' sales policies resulting in higher foreign currency outflows and inventory levels. However, in the case of procurement from the domestic industry, the users can maintain lower inventory levels, thereby making them more competitive for end customers. Presence of a vibrant domestic industry is essential to ensure a fair and competitive Indian market, which in its absence would be completely dominated by subject countries.²⁸²
415. The Authority notes that even with the growth of demand in the POI, only the volume of imports from the subject countries has increased. The increase in imports from the subject countries has not only adversely impacted the market share of the domestic industry but has also impacted the volume of imports from non-subject countries, whose share in the market has been reduced to almost zero in the POI. Therefore, it is noted that even though imports of subject goods may decline as a consequence of the imposition of anti-dumping duties, imports from non-subject countries would replace such dumped imports and, thereby, mitigate the adverse effects, if any. It is also in the interest of the user industry to have sources of supply of subject goods within the Indian territory for prompt and short-term delivery of the subject goods. It is also in the long-term interest of the user industry to maintain multiple sources of supply.

Q CONCLUSIONS

416. Based on the submissions made, substantiated information provided by the interested

²⁸¹ Para 63 of DOZCO's Comment on Disclosure Statement.

²⁸² Para 62 of DOZCO's Comments on Disclosure Statement.

parties and the facts available before the Authority as recorded and examined in the aforementioned paragraphs and on the basis of determination of dumping and consequent injury to the domestic industry, the Authority concludes the following:

- i. **Product under consideration and like article:** The article manufactured by the domestic industry and the subject goods exported from the subject countries are 'like article' to each other in terms of Rule 2 (d) of the AD Rules, 1995.
- ii. **Standing of the domestic industry:** The applicant accounts for 100 % of the eligible domestic production. The imports made by the applicant represent merely *** % of the total demand of the PUC. The applicant satisfies the requirements stipulated under Rule 2 (b) of the AD Rules, 1995 and application satisfies the standing requirements under Rule 5(3) of the AD Rules, 1995.
- iii. The application contained all information relevant for the purpose of initiation of the anti – dumping investigation and necessary evidence in terms of Rule 5(2) of the AD Rules, 1995 to justify the initiation of the present investigation for determination of dumping and material injury to the domestic industry in terms of Rule 5 (3) of the AD Rules, 1995.
- iv. **Confidentiality:** The claims regarding confidentiality were accepted wherever warranted and in case, where such confidentiality claims were found to be excessive, the interested parties were directed to disclose the same or provide appropriate non – confidential summary of the same in terms of Rule 7 of the AD Rules, 1995.
- v. **Dumping:**
 - a. **Rock breaker:** Two producers from China PR namely Yantai Eddie Precision Machinery Co., Ltd., and Ningbo Yinzhou Get Machinery Ltd., and five producers from Korea RP, namely Soosan Heavy Industries Co., Ltd., Daemo Engineering Co. Ltd., FEEL Industrial Engineering Co. Ltd., Hyundai Everdigm Corporation, and D and A Heavy Industries Co., Ltd. participated in the investigation. Based on the information provided by such exporters and the constructed normal value, the dumping margin for exports of Yantai Eddie Precision Machinery Co., Ltd., Ningbo Yinzhou Get Machinery Ltd, Daemo Engineering Co. Ltd., FEEL Industrial Engineering Co. Ltd. and Hyundai Everdigm Corporation was determined to be positive.
 - b. **Chisel:** One producer from China PR namely Ningbo Yinzhou Get Machinery Ltd, and two producers from Korea RP, namely Soosan Heavy Industries Co. Ltd., and Hansung Special Machinery Co., Ltd. participated

in the investigation. Based on the information provided by such exporters and the normal value, the dumping margin for exports of Ningbo and Hansung has been determined positive. However, the dumping margin for Soosan was determined to be negative.

- vi. **Volume effect:** The volume of imports and the dumping margin of the subject goods from the subject countries were found to be above *de minimis* thresholds as stipulated under para (iii) of Annexure – II to the AD Rules, 1995.
- vii. With respect to the volume effect of the dumped imports on the state of the domestic industry as required to be assessed under para (ii) of the AD Rules, 1995, it was found that such imports (rock breaker as well as chisel) have increased in absolute as well as relative terms to the production, consumption, and demand of the PUC in India. It was further found that the growth in demand was almost entirely subsumed by such dumped imports.
- viii. **Price effect:** As regards the price effect of such dumped imports, it was found that price undercutting from both the subject countries was positive. It was further found that such dumped imports were adversely impacting the prices of the domestic industry. The landed value of the subject imports (for rock breakers as well as chisel) was found to be at their lowest level in the POI.
- ix. **Volumetric and financial parameters of the domestic industry:** As regards the effect of such dumped on the economic parameters of the domestic industry, the following conclusions were reached:
 - a. **Production, capacity, capacity utilisation, sales, and market share:** The applicant's capacity has remained constant for both rock breaker and chisel. However, due to the presence of dumped imports it was not able to fully utilise its capacities. The applicant's production as well as sales for rock breakers and chisels declined in the POI as compared to the injury period. There was considerable growth in demand which was largely met by dumped imports.
 - b. **Cost of sales, selling price, profitability, and return on capital employed:** For both rock breakers and chisels, the applicant's per unit cost of sales has remained almost constant except for the year 2020-21. The applicant's selling price for rock breakers and chisels have also declined compared to previous years but has increased compared to immediate previous year. However, the selling price of the applicant was found to be below the unit cost of sales. Further, the rise in selling price for both rock breakers and chisels was not found to be commensurate with the rise in the

- cost of sales. The applicant's cash profits, profit before interest and tax, as well as return on capital employed have significantly declined as compared to the base year. Even with restoration of demand during the POI, the applicant was not able to achieve profits.
- c. **Inventories:** The applicant's inventories for both rock breakers and chisels were found to be increased during the POI.
- d. **No. of employees, productivity, and wages:** The applicant has been able to increase its number of employees and the wages to be paid to them. However, the productivity of the applicant for both the products has been affected due to decline in production as a consequence of dumped imports.
- e. **Growth:** The applicant's growth in terms of production, domestic sales, profits, return on capital employed, inventories and market share were found to be adversely impacted for both rock breakers as well as chisels.
- f. **Ability to raise capital investment:** It was found that despite an increase in demand of the subject goods, the applicant's performance had deteriorated which has impacted its ability to raise capital investments.
- x. **Causal link:** It was found that domestic industry has suffered material injury due to the dumped imports and no other known factors were found to be the cause of the injury. There has been an increase in the volume of the dumped imports during the POI due to which the inventories of the domestic industry have piled up. The presence of dumped imports in the Indian market forced the applicant to sell its like article at prices below its cost of sales, thereby incurred losses and adversely affected the profitability parameters of the domestic industry. Further, the incremental demand for the subject goods (for both rock breakers and chisels) in the POI was largely subsumed by the imports from the subject countries due to which the applicant was not able take advantage of the growth in Indian consumption.
- xi. **Injury Margin:**
- a. **Rock breaker:** Upon comparison of the non – injurious price determined as per Annexure – III to the AD Rules, 1995 and the landed value of subject imports from the subject countries as required under Rule 17 (3) (b) to the AD Rules, the injury margin for producers from China PR, namely Eddie and Ningbo and the injury margin for DAEMO, FEEL and Everdigm from Korea RP, were found to be positive.
- b. **Chisels:** Upon comparison of the non – injurious price determined as per Annexure – III to the AD Rules, 1995 and the landed value of subject

imports from the subject countries as required under Rule 17 (3) (b) to the AD Rules, the injury margin for Ningbo from China PR is positive and the injury margin for all producers from Korea RP were found to be negative.

- xii. **Indian industry issues:** None of the interested parties filed any substantive quantitative data through which the impact of anti – dumping duties could be assessed on the end user. It is noted that users of the PUC would have multiple options if a viable domestic industry exists.

R. RECOMMENDATIONS

417. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was provided to the domestic industry, other domestic producers, embassies of the subject countries, producers/exporters of the subject goods from the subject countries, importers, users, and other interested parties to provide information with regards to dumping, injury, and causal link. Having initiated under Rule 5(3) of the AD Rules, 1995 and conducted investigation in accordance with Rule 6 of the AD Rules, 1995 regarding dumping, injury, and causal link as required under Rule 17 (1) (a) of the AD Rules, 1995 and established material injury to the domestic industry due to subject imports from the subject countries, the Authority recommends imposition of anti – dumping duties on the subject imports from the subject countries.
418. Considering the nature of the product under consideration and the large number of PCNs involved, the Authority considers that it would be appropriate to recommend anti-dumping duty as a percentage of the CIF value of the import price of the subject goods.
419. Further, having regard to the lesser duty rule as enunciated in Rule 17 (1)(b) of the AD Rules, 1995, the Authority recommends imposition of definitive anti – dumping duties equal to the lesser of margin of dumping or margin of injury, for a period of five (5) years, from the date of notification to be issued in this regard by the Central Government, to remove the injury to the domestic industry. Accordingly, definitive anti – dumping duties equal to the amount expressed as percentage of CIF value indicated in **Col. (7)** of the **‘DUTY TABLE’** below is recommended to be imposed on all subject imports from the subject countries originating or exported from the subject countries.

S DUTY TABLE

SN	CTH Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty (% of CIF Value in USD)
Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)
1.	84314930 and 84314990	Hydraulic Rock Breakers ^{#1}	China PR	Any country including China PR	Yantai Eddie Precision Machinery Co., Ltd	131.11%
2.	-do-	Alloy Steel Chisels ^{#2}	China PR	Any country including China PR	Yantai Eddie Precision Machinery Co., Ltd	29.21 %
3.	-do-	Hydraulic Rock Breakers ^{#1}	China PR	Any country including China PR	NINGBO YINZHOU GET MACHINERY LTD.	26.95%
4.	-do-	Alloy Steel Chisels ^{#2}	China PR	Any country including China PR	NINGBO YINZHOU GET MACHINERY LTD.	4.55%
5.	-do-	Hydraulic Rock Breakers ^{#1}	China PR	Any country including China PR	Any producer other than S.No. 1 to 4 above	162.50 %
6.	-do-	Hydraulic Rock Breakers ^{#1}	Any country other than subject	China PR	Any producer	162.50 %

SN	CTH Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty (% of CIF Value in USD)
Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)
			countries			
7.	-do-	Alloy Steel Chisels ^{#2}	China PR	Any country including China PR	Any producer other than S.No. 1 to 4 above	29.21 %
8.	-do-	Alloy Steel Chisels ^{#2}	Any country other than subject countries	China PR	Any producer	29.21 %
9.	-do-	Hydraulic Rock Breakers ^{#1}	Korea RP	Any country including Korea RP	Soosan Heavy Industries Co., Ltd.	NIL
10.	-do-	Alloy Steel Chisels ^{#2}	Korea RP	Any country including Korea RP	Soosan Heavy Industries Co., Ltd.	NIL
11.	-do-	Hydraulic Rock Breakers ^{#1}	Korea RP	Any country including Korea RP	DAEMO Engineering Co. Ltd.	9.43%
12.	-do-	Alloy Steel Chisels ^{#2}	Korea RP	Any country including Korea RP	DAEMO Engineering Co. Ltd.	12.47%

SN	CTH Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty (% of CIF Value in USD)
Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)
13.	-do-	Hydraulic Rock Breakers ^{#1}	Korea RP	Any country including Korea RP	D and A Heavy Industries Co., Ltd.	Nil
14.	-do-	Alloy Steel Chisels ^{#2}	Korea RP	Any country including Korea RP	D and A Heavy Industries Co., Ltd.	12.47%
15.	-do-	Hydraulic Rock Breakers ^{#1}	Korea RP	Any country including Korea RP	Hyundai Everdigm Corporation	11.91%
16.	-do-	Alloy Steel Chisels ^{#2}	Korea RP	Any country including Korea RP	Hyundai Everdigm Corporation	12.47%
17.	-do-	Hydraulic Rock Breakers ^{#1}	Korea RP	Any country including Korea RP	FEEL INDUSTRIAL ENGINEERING CO. LTD.	8.16%
18.	-do-	Alloy Steel Chisels ^{#2}	Korea RP	Any country including Korea RP	FEEL INDUSTRIAL ENGINEERING CO. LTD.	12.47%
19.	-do-	Hydraulic Rock	Korea RP	Any country including	HANSUNG SPECIAL MACHINERY	52.77%

SN	CTH Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty (% of CIF Value in USD)
Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)
		Breakers ^{#1}		Korea RP	CO., LTD	
20.	-do-	Alloy Steel Chisels ^{#2}	Korea RP	Any country including Korea RP	HANSUNG SPECIAL MACHINERY CO., LTD	Nil
21.	-do-	Hydraulic Rock Breakers ^{#1}	Korea RP	Any country including Korea RP	Any producer other than S.No. 9 to 20 above	52.77%
22.	-do-	Hydraulic Rock Breakers ^{#1}	Any country other than subject countries	Korea RP	Any producer	52.77%
23.	-do-	Alloy Steel Chisels ^{#2}	Korea RP	Any country including Korea RP	Any producer other than S.No. 9 to 20 above	12.47%
24.	-do-	Alloy Steel Chisels ^{#2}	Any country other than subject countries	Korea RP	Any producer	12.47%

#1

For Hydraulic Rock Breakers:

- a. Hydraulic Rock Breakers are used in construction and mining industry along with Alloy Steel Chisels for carrying out demolition, excavation, mining, concrete and boulder breaking activities. Hydraulic Rock Breakers are imported and sold in fully assembled condition as well as in semi-knocked (SKD) condition and CKD (completely knocked down) condition, wherein different assemblies, sub-assemblies as mentioned in **Table D1** below can be imported to form fully assembled hydraulic rock breakers.
- b. The duties mentioned in **Col.7** of the Duty Table above for fully assembled Hydraulic Rock Breakers shall be applicable to imports of Hydraulic Rock Breakers and the Assemblies/Sub-assemblies mentioned in **Table D1** only.
- c. Where Alloy Steel Chisels are imported with Hydraulic Rock Breakers, anti-dumping duties applicable to Alloy Steel Chisels shall be applicable to such Alloy Steel Chisels. *Anti-dumping duties for hydraulic rock breakers and its assemblies/sub-assemblies mentioned in Table D1, shall not be made applicable to alloy steel chisels or vice-versa.* (Also refer point *h.* below)
- d. The duties on hydraulic rock breakers shall be applicable only to the following assemblies/sub-assemblies and not to other parts and components of hydraulic rock breakers:

Table D1	
Assemblies/sub-assemblies of hydraulic rock breakers covered under the scope of anti-dumping duties	Pictorial Representation of Component²⁸³
h. Front head	
i. Back head	
j. Piston for hydraulic cylinder or rock breaker	

²⁸³ The photos are for representative purposes only. The form of the actual assemblies/sub-assemblies may vary.

Table D1	
Assemblies/sub-assemblies of hydraulic rock breakers covered under the scope of anti-dumping duties	Pictorial Representation of Component²⁸³
k. Cylinder body or hydraulic unit (Hydraulic body consists of front head, back head, cylinder and piston)	
l. Bracket	
m. Frame	
n. Cylinder for hydraulic rock breaker	

- e. The recommended duties on assemblies/sub-assemblies shall be applicable on them irrespective of the fact that whether they are imported individually or along with other assemblies/sub-assemblies mentioned in **Table D1** above.
- f. The customs authorities are requested to ensure that exporters do not attempt to evade the recommended duties by physically combining two or more assemblies/sub-assemblies together to establish that they are exporting a different assemblies/sub-assembly other than what has been covered in **Table D1** above. Further, the description of the goods being cleared should be captured adequately in terms of value and unit of measurement.
- g. The duties applicable to hydraulic rock breakers shall not be applicable to any other assemblies/sub-assemblies, part or component, or kits which have not

been mentioned in Table D1 above.

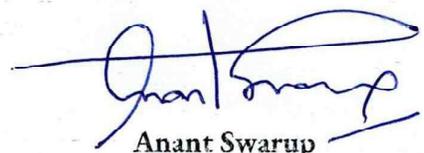
#2

For Alloy Steel Chisels:

- h. Alloy Steel Chisels are used along with hydraulic rock breakers. They come in various shape, size and the tip of the chisel varies according to the required end use.
- i. Alloy Steel Chisels are also imported by the name of tool, wedge, toil,moil, teeth, tooth, working tool, chisel blunt, hydraulic hammer (tool), breaker tool etc. Where chisels are imported with rock breakers, anti-dumping duties applicable to chisels shall be applicable to such chisels. *Anti-dumping duties applicable to alloy steel chisels shall not be made applicable to hydraulic rock breakers or its assemblies/sub-assemblies mentioned in Table D1 above.* (Also refer point *b* above).

T FURTHER PROCEDURE

- 420. An appeal against the recommendation of the Authority shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.


Anant Swarup
(Designated Authority)