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**F. No. 07/11/2023-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: 25<sup>th</sup> November 2023**

**FINAL FINDINGS**  
**Case No. - A.D (SSR)-05/2023**

**Subject: Sunset review investigation concerning imports of Textured Tempered Coated and Uncoated Glass from Malaysia.**

**F. No. 7/11/2023-** Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the 'Act') and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as 'the Rules' or 'AD Rules') thereof;

**A. BACKGROUND OF THE CASE**

1. M/s Borosil Renewables Limited (hereinafter also referred to as “the domestic industry” or “the applicant”) has filed an application before the Designated Authority (hereinafter referred to as the “Authority”), in accordance with 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, as amended from time to time (hereinafter referred as the ‘Rules’) for sunset review of anti-dumping investigation concerning the imports of Textured Tempered Coated and Uncoated Glass (hereinafter referred as the “subject goods” or the “product under consideration or PUC”), originating in or exported from Malaysia (hereinafter referred to as the “subject country”).
2. The applicant has alleged likelihood of continuation or recurrence of dumping of subject goods, originating and exported from the subject country and consequent injury to the domestic industry and has requested for review and continuation and enhancement of the anti-dumping duty imposed on the imports of the subject goods, originating in or exported from the subject country.
3. Section 9A (5) of the Act, inter alia, provides that the anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition, and the Authority is required to review whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on

behalf of the domestic industry, as to whether the expiry of duty is likely to lead to the continuation or recurrence of dumping and injury.

4. Rule 23(1B) of the Rules provides as follows:

*"... any definitive anti-dumping duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition, unless the Designated Authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry."*

5. Based on the substantiated application with *prima facie* evidence of likelihood of dumping and injury filed on behalf of the domestic industry in accordance with Section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated the present sunset review investigation *vide* Notification No. 7/11/2023-DGTR (AD-SSR No. 05/2023) dated 19.09.2023 to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry and whether there is a need for the continued imposition of anti-dumping duty in respect of the subject goods originating in or exported from Malaysia.
6. Earlier, the Authority initiated an anti-dumping investigation in respect of imports of the subject goods from Malaysia on 05.02.2018 and after conducting the investigation recommended imposition of duty *vide* final findings notification no. 6/45/2017-DGAD dated 17.01.2019. On the basis of recommendations made by the Authority, the following definitive anti-dumping duties were imposed by the Central Government *vide* notification no. 12/2019-Customs (ADD) dated 26.02.2019.

S. No.	Producers	UOM	Amount (in USD)
1	M/s Xinyi Solar Sdn. Bhd., Malaysia	USD / MT	0
2	Any Producer other than M/s Xinyi Solar Sdn. Bhd., Malaysia	USD / MT	114.58

7. The scope of the present review covers all aspects of the aforementioned original investigation concerning the subject goods.

**B. PROCEDURE**

8. The procedure described below has been followed with regard to the investigation:
- i. The Authority issued a notification dated 19.09.2023, published in the Gazette of India Extraordinary, initiating an investigation concerning imports of the subject goods from Malaysia.

- ii. The Authority sent a copy of the initiation notification to the Embassy of the subject country in India, known producers/exporters from Malaysia, known importers/users, and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 30 days of the initiation notification in accordance with Rule 6(2) of the AD Rules. The time limit to file information was extended up to 25.10.2023.
- iii. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, known importers, and to the embassy of the subject country in India in accordance with Rule 6(3) of the AD Rules.
- iv. The embassy of Malaysia in India was also requested to advise the exporters/producers from Malaysia to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from Malaysia.
- v. The interested parties were requested to provide relevant information in the form and manner prescribed and to make their views known in writing within the prescribed time, in accordance with Rules 6(2) and 6(4) of the Rules.
- vi. The Authority sent exporter's questionnaire to the following known producers/ exporters in Malaysia, whose details were made available by the applicant, to elicit relevant information in accordance with Rule 6(4) of the Rules:
  - a. Xinyi Solar Malaysia Sdn. Bhd.
  - b. Gar Lightglass Sdn Bhd
- vii. In response, only Xinyi Solar Malaysia Sdn. Bhd has filed the exporter's questionnaire response.
- viii. The Authority forwarded a copy of the initiation notification to the following known importers/users/user associations of the subject goods in India, whose names and addresses were made available to the Authority, and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6(4):
  - a. Mundra Solar PV Limited
  - b. Swelect Energy Systems Limited
  - c. Premier Energies Limited
  - d. Renewsys India Private Limited
  - e. Goldi Solar Private Limited
  - f. Waaree Energies Limited
  - g. Alpex Exports Pvt Ltd
  - h. Vikram Solar Pvt Ltd
  - i. Topsun Energy Limited
  - j. Tata Power Solar Systems Limited
  - k. Emmvee Photovoltaic Power Pvt Ltd
  - l. Navitas Green Solutions Pvt Ltd
  - m. Sova Power Limited

- ix. None of the users / importers / consumers have filed the importer's/ user's questionnaire response.
- x. Exporters, foreign producers and other interested parties who have not responded to the Authority, or have not supplied information relevant to this investigation, are treated as non-cooperating interested parties.
- xi. The Authority issued the Economic Interest Questionnaire to the Malaysian embassy, all the known exporters, importers and the domestic industry. None of the other interested parties barring the domestic industry have filed the response to the Economic Interest Questionnaire.
- xii. Information provided by the interested parties on a confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority accepts the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on the confidential basis were directed to provide sufficient non-confidential version of the information filed on a confidential basis.
- xiii. The interested parties were asked to share the non-confidential version of the responses, submissions and evidence presented by them with the other interested parties.
- xiv. The period of investigation (POI) for the purpose of the present investigation is 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023 (12 months). The injury period for the present investigation is 1st April 2019 - 31st March 2020, 1st April 2020 - 31st March 2021, 1st April 2021 - 31st March 2022, and the POI.
- xv. Additional/supplementary information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the investigation.
- xvi. The Non-injurious Price (NIP) is based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules. It has been worked out so as to ascertain whether a duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xvii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and from DG-Systems, Central Board of Indirect Taxes and Customs (CBIC) to provide the transaction-wise details of imports of subject goods for the injury period. The same has been relied upon for computation of the volume and value of imports to correlate the quantum of exports from specified exporters and validate responses filed, to the extent feasible.
- xviii. In accordance with Rule 6(6) of the Rules, the Authority provided the opportunity to all interested parties to present their views orally in the oral hearing held on 03.11.2023 which was attended by interested parties. All the parties who presented their views in the oral hearing were requested to file written submissions of these views. Non-confidential versions of the

written submissions were circulated to the interested parties by email on 6.11.2023, and an opportunity was given to them to submit rejoinder submissions by 8.11.2023, if any.

- xix. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded these final findings on the basis of the facts available.
- xx. The Authority issued the disclosure statement to all the interested parties containing all essential facts under consideration for making final recommendations to the Central Government on 18<sup>th</sup> November 2023. The interested parties were directed to file their comments on the disclosure statement by 22<sup>nd</sup> November 2023.
- xxi. The Authority has examined the 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 in these final findings and has not been repeated for the sake of brevity.
- xxii. The Authority has considered all the arguments raised and information provided by the interested parties, to the extent the same are supported with evidence and considered relevant to the present investigation.
- xxiii. ‘\*\*\*’ in the final findings represents information furnished by an interested party on a confidential basis, and so considered by the Authority under the Rules.
- xxiv. The exchange rate adopted by the Authority during the POI for the subject investigation is US\$= Rs. 81.15.

### **C. PRODUCT UNDER CONSIDERATION AND THE LIKE ARTICLE**

- 9. The product under consideration in the present sunset review is “Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission of thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated” originating in or exported from Malaysia.
- 10. The product in the market parlance is also known by various names such as solar glass, solar glass low iron, solar PV glass, high transmission photovoltaic glass, tempered low iron patterned solar glass etc. Textured tempered glass is used as a component in solar photovoltaic panels and solar thermal applications. The level of transmission can be achieved by keeping the iron content low, typically less than 200 ppm. The transmission level goes up by about 2%-3% when coated with an anti-reflective coating liquid.

### **Submissions made by producers/exporters/importers/other interested parties**

11. No submission has been made by the producers/exporters with regard to the scope of the product under consideration and like article.

### **Submissions made by the Domestic Industry**

12. The product under consideration in the present sunset review is “Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission of thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated” originating in or exported from Malaysia.
13. The product in the market parlance is also known by various names such as Solar Glass, Solar Glass Low Iron, Solar PV Glass, High Transmission Photovoltaic Glass, Tempered Low Iron Patterned Solar Glass, etc. Textured Tempered Glass is used as a component in Solar Photovoltaic Panels and Solar Thermal applications. The level of transmission can be achieved by keeping the iron content low, typically less than 200 ppm. The transmission level goes up by about 2%-3% when coated with an anti-reflective coating liquid.
14. The subject products are predominantly imported under tariff classification at the 8-digit level is 70071900 even though the same are being classified and imported under various sub-headings of the Customs Tariff Act, 1975, as can be seen from the import data. However, it is noted that subject goods are also being imported in the sub-headings 70031990, 70051010, 70051090, 70052190, 70052990, 70053090, 70071900, 70072190, 70072900, 70169000, 70200090 and 85414011 as evidenced by the import data. Moreover, it is also submitted that the custom classification is indicative only and in no way, it is binding upon the product scope and the product description prevails in circumstances of conflict
15. There is no known difference between the subject goods produced by the domestic industry and those imported from Malaysia. The subject goods produced by the domestic industry and the subject goods imported from the subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market and tariff classification of the goods. The applicant has claimed that the subject goods, which are coming into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-uses of the subsidized imports and the domestically produced subject goods and the product under consideration manufactured by the applicant. The two are technically and commercially substitutable and hence should be treated as ‘like article’ under the Rules.

### **Examination of the Authority**

16. The product under consideration in the original investigation as well as in the present investigation was defined as “Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission of thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated (hereinafter referred to as the “subject goods or product under consideration”).

17. The product under consideration is classified under the category “Glass and Glassware” in Chapter 70 of the Customs Tariff Act, 1975, and further under 7003, 7005, 7007, 7016, 7020 and 8541 as per Customs Classification. However, Customs classification is indicative only and not binding on the scope of the investigation.

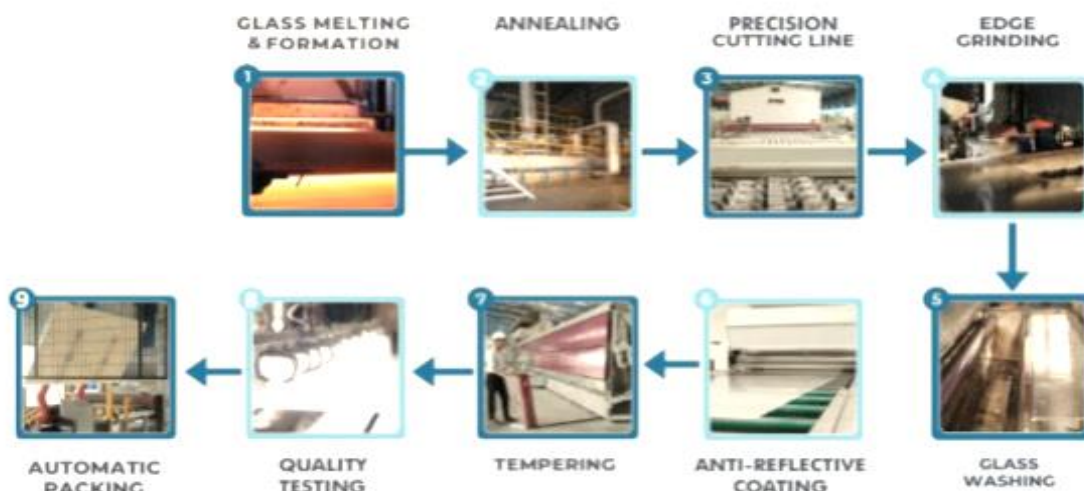
With regard to like article, Rule 2(d) of the Anti-dumping Rules provides as under:

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

18. The Authority notes that there is no known difference in between the product under consideration being produced by the Indian industry and those being exported from Malaysia. The product under consideration produced by the Indian industry and imported from Malaysia are comparable in terms of characteristics such as physical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The subject goods produced by the domestic industry are like article to the product under consideration imported from the subject country within the scope and meaning of Rule 2(d) of anti-dumping rules.
19. No party has disputed the definition of the product under consideration as proposed by the applicant and as defined by the Authority at the stage of the initiation of the investigation. It is further noted that the product under consideration defined in the present investigation is similar to the product under consideration defined in previous investigation. In view of the above, the Authority confirms the scope of the PUC as defined at the stage of initiation.

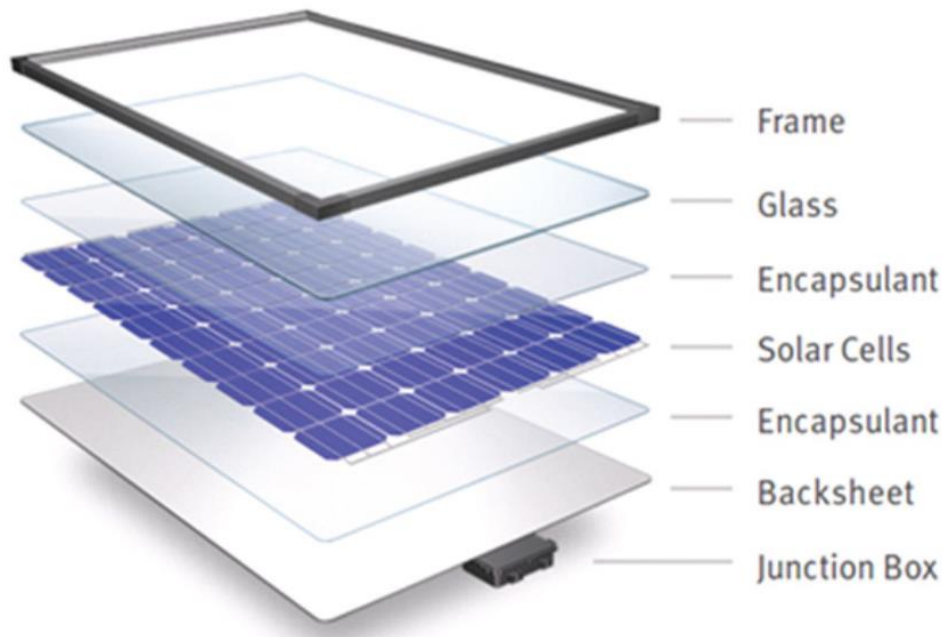
#### **D. MANUFACTURING PROCESS OF THE PRODUCT UNDER CONSIDERATION**

20. The manufacturing process of the subject goods is depicted in the flowchart below:



### **Usage of the subject goods**

21. The subject goods are predominately used as one of the inputs in the manufacturing of the solar module. As per the information made available to the Authority by the interested parties, the subject goods accounts for 4% to 5 % of the total value of the solar module. The pictorial diagram of the inputs used in the Solar Module is as follows.



### **E. SCOPE OF DOMESTIC INDUSTRY AND STANDING**

22. The current application has been filed by M/s Borosil Renewables Limited which commands 100% share in Indian production of the subject goods during the period of investigation. As per the information available with the Authority there is no other known producer of the product under consideration in the country in the POI.
23. As per the available information, the applicant, has neither imported the subject goods from the subject country nor it is related to any importer or exporters of the subject goods. In view of the above, the applicant fulfils the criteria of domestic industry and the standing as laid down under the Rules.
24. None of the producers/exporters/other interested parties has made any submissions with regard to the scope and the standing of the domestic industry.
25. In view of the above, the Authority has considered the applicant as the domestic industry within the meaning of the Rule 2(b) of the Rules and the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.



26. Information on record shows that the production by the applicant constitutes “a major proportion” of total Indian production.
27. On examination of the material on record as above, and considering the legal provisions, the Authority notes that the applicant constitutes the domestic industry in terms of Rule 2(b) of the Rules and the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

## **F. CONFIDENTIALITY**

### **Submissions made by the domestic industry**

28. The domestic industry has made the following submissions with regard to the confidentiality claims of the respondents:
  - a. As far as their submissions/information are concerned, confidentiality has been claimed in accordance with the provisions of Rule 7 of the Rules and the trade notices issued in this regard.
  - b. All the economic parameters considered by the Authority for the purpose of arriving at the determination of injury have been provided in compliance with trade notice 10/2018 dated 7.09.2018.
  - c. Response filed by the participating producers fails to comply with requirements laid down by the Authority with regard to confidentiality. Responses to most of the questions in the questionnaire have been claimed completely confidential with no meaningful summary provided.
  - d. The domestic industry has fulfilled the obligation of providing import data in manner stated in trade notice 07/2018. The interested parties are free to obtain data from DGCI&S or from the Authority.

### **Submissions made by exporters/importers and other interested parties**

29. The producers/exporters/other interested parties have made the following submissions with regard to confidentiality claims of the domestic industry.
  - a. The applicant has claimed excessive confidentiality with respect to the information provided in Format A to L and NIP information. Moreover, the domestic industry has not provided trend of data wherein information was to be given for more than one year.
  - b. Since the domestic industry has not followed trade notice 03/2021 dated 12.04.2021, the current investigation needs to be terminated.
  - c. The domestic industry has claimed supporting evidence for normal value and export price as confidential, which ought to be provided for comments from interested parties.

- d. The exporter has filed its data as per the applicable trade notices and as per the practice of the DGTR.

### **Examination by the Authority**

30. With regard to confidentiality of information, Rule 7 of the Rules provides as follows:

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

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

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

31. Submissions made by the domestic industry and other interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. The Authority notes that the information provided by all the interested parties on a confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. All interested parties have claimed their business-related sensitive information as confidential.
32. The Authority notes that the domestic industry and other interested parties have provided non-confidential version of all the information that is relevant for the purpose of the present investigation.

### **G. MISCELLANEOUS SUBMISSION**

#### **Submissions of the domestic industry**

33. The following miscellaneous submissions have been made by the domestic industry:
- a. The duties against the subject goods from China and Malaysia have worked positively for the Indian producers. Although the import price of the subject goods from China and Malaysia is still below that of the cost of sales and selling price of the domestic industry,

the imposition of ADD on the subject goods, lent some breathing space to the producers of the subject goods in India.

- b. Post imposition of the duties, the domestic industry as well as other potential players, considering the demand of the subject goods in the country and its growth perspective, invested in the manufacturing capacities for the subject goods. Prior to the imposition of ADD against Malaysia in 2019 the manufacturing capacity for the subject goods was a mere \*\*\* MT/ per annum with Borosil being the only producer. Post imposition of duties, while Borosil expanded its capacity, five new players joined and are about to commence production.

#### **Submissions of the other interested parties**

34. The following miscellaneous submissions have been made by the other interested parties
  - a. The Authority should not rely on the data based on market intelligence filed by the applicant and should source reliable and authenticated data from DGCI&S and examine the same to conclude the present investigation.
  - b. Not all evidence can justify the initiation of an investigation. Rather, the evidence presented to the Authority must be of an adequate quality to constitute “*sufficient evidence*”. The allegations set out in the application are largely based on estimates and assumptions. Moreover, the applicant failed to draw logical conclusions from the data submitted. Thus, the producer/exporter submits that the applicant has failed to provide sufficient evidence to justify the initiation of the present investigation.

#### **Examination by the Authority**

35. The Authority has examined the various issues raised by the interested parties in the following paragraphs:
36. In the case of initiation of sunset review investigation for the continuation of anti-dumping duties, the Authority needs to *prima facie* satisfy itself that the expiry of the duty ‘would be likely to lead to continuation or recurrence of dumping and injury’. This conclusion of initiating the investigation would be reached by the Authority after perusing the duly substantiated application filed by the domestic industry.
37. At the time of initiation, the applicant is *prima-facie* required to make a case that cessation of anti-dumping duty would result in recurrence of dumping and injury to the domestic industry. For the purpose of initiating the present sunset review investigation, the Authority thoroughly scrutinized the import/export data of the subject country and *prima facie* satisfied itself that even after the existence of anti-dumping duties against the subject country, the trend of imports of the subject goods in the domestic market was constantly positive during the injury period and the period of investigation.
38. Notably, the sunset review investigation requires the likelihood analysis, of continuation or recurrence of dumping and injury, therefore, the presence/absence of dumping and injury is not of sole significance unlike in an original investigation. Hence, while initiating the present

investigation, the Authority had *prima facie* sufficient evidence to investigate the likelihood of continuation or recurrence of dumping and injury.

39. It is further noted that none of the interested parties has provided any information / evidence to show how initiation based on the information presented by the applicant has violated any rule or how has it prejudiced the interests of any interested party. The Authority, therefore, notes that there is no merit in the submissions of the other interested parties on this count.
40. As regards the request of the exporter to not rely on the import data submitted by the applicant, the Authority notes that it has relied upon DGCIS import data for the purpose of the present final findings.

#### **H. DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

41. As per section 9A(1)(c) of the Act, the normal value in relation to an article means:
- (i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
  - (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -*
    - (a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
    - (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (b):*
- 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.*

#### **Submissions by the domestic industry**

42. The submissions made by the domestic industry with regard to normal value, export price and dumping margin are as follows: -
- i. The Malaysian exporters continue to dump the subject goods in the Indian market despite the imposition of anti-dumping duties. In fact, the export price of the Malaysian exporters to India has declined post-imposition of ADD despite the increase in cost.
  - ii. Interestingly, the cooperating exporter has not even claimed that they are not dumping the subject goods in India.

- iii. From the information available with the domestic industry, it is observed that Xinyi Malaysia has obtained an interest-free loan from their fellow subsidiary and immediate holding company. It is an admitted fact that they are not paying any interest on their loans obtained from the related parties. As a result of this, the incidence of financial cost is missing from their audited accounts. Since they are not paying any interest, which is otherwise due in normal circumstances, the domestic industry requested the Authority to add interest cost to the total cost of the subject goods before conducting any of the mandatory tests necessary for determining normal value in Malaysia. It has been further submitted that the Authority had adjusted the interest cost for Malaysia in the original investigation also.
- iv. The domestic industry has requested the Authority to adopt the same approach adopted in the case of Recordable Digital Versatile Disc (DVD) of all kinds from Malaysia Thailand and Vietnam [F. No.14/16/2009-DGAD, dated 2.7.2010], wherein the Authority had added a notional interest cost of 5% to the cost of production even though there was no borrowing by the company.
- v. In relation to the procurement of raw materials from China, the domestic industry has submitted that they have noted from the annual report of the Xinyi Group that they are procuring materials from their related parties situated in China. Since the Authority is treating China as a non-market economy, they have requested the Authority to disregard the price of raw materials procured from China and make appropriate adjustments to their cost of production after considering the prevailing international prices. The domestic industry has further requested the Authority that the raw material prices cannot be accepted on their face value also on the ground that the raw materials have been procured from a related party. In this connection, the domestic industry has invited the attention of the Authority to the investigation related to 'Rubber Chemicals, namely, MBT, CBS, TDQ, PVI and TMT, originating in or exported from China PR and imports of PX-13 (6PPD) originating in or exported from China PR and Korea RP [F. No. 15/1/2013-DGAD, dated 29.4.2014] and [F. No. 6/20/2020 DGTR dated 26.07.2021], wherein the Authority had rejected the prices of major raw material procured from China, on the ground that prices from a non- market economy country would not reflect the fair cost. The domestic industry has requested that the same approach should be extended in this investigation also.
- vi. The domestic industry has requested the Authority to check whether exporters have claimed SG&A and profit for unrelated exporters.
- vii. It has further been requested by the domestic industry that the cost of assets for the purpose of depreciation should also be adjusted after considering the fair value of machinery, which is imported from China. This approach will be in line with the stand taken by the Authority in the recent findings.
- viii. The Authority should appropriately add the finance cost to the cost of production of the exporters, as they are getting interest-free loan from the related parties.

- ix. The Authority should check the adjustment claimed for computing ex-factory export price as during this period, the freight cost and other expenses were high during the POI as compared to the previous years.
- x. The parent company in China has supplied all the plant and machinery to their Malaysia subsidiary under a related party transaction. A list of certified agencies in Malaysia has also been provided by the domestic industry so that the exporter can give the certificate about the machinery to the satisfaction of the Authority.
- xi. The exporter/producer Xinyi Solar (Malaysia) has an Indian office with the name of 'Xinyi Glass (India)' and as per the market information, Xinyi Glass (India) is involved in the solicitation business of the PUC for the exporter.

#### **Submissions of the other interested parties**

- 43. The submissions made by the other interested parties with regard to normal value, export price and dumping margin are as follows:
  - i. The domestic industry has failed to provide any reliable information in relation to normal value and export price of the subject goods in Malaysia and, therefore, the same should not be considered for final determination.
  - ii. The Authority should consider the information filed by the producers/exporters for determining the dumping margin.
  - iii. Xinyi Solar Malaysia has purchased inputs through Guangxi Xinyi Trading Co. Ltd. which is based in China. The said procurement is at an arm's length price. These goods supplied by Guangxi Xinyi Solar Trading Co. Ltd. are not produced by that company but rather purchased from unrelated suppliers at arm's length basis.
  - iv. Xinyi Solar Malaysia has purchased the plant and machinery at market price with the approval of the Government of Malaysia. Moreover, this issue has already been settled in the original investigation, and the relevant extracts from the final findings is reproduced as under:

*“As regards information of purchase of plant and machinery and spares from related party, the Authority notes that it is practically impossible to obtain the international prices of spares and plant and machinery since such goods are by and large customised by the buyer for their own use. The Authority therefore holds that while benchmark on international prices of raw materials are available, similar credible information for spares/machinery cannot be obtained in view of technical specifications and customised requirements. The Exporter's Questionnaire during the course of instant investigation got revised. However, transaction wise information on spares/equipment's procured from related parties was obtained from the exporter keeping in view submissions of interested parties in particular the domestic industry. The Independent Auditor of M/s Xinyi Solar (Malaysia) has certified that financial statement of the company are in accordance with the Malaysian Financial Reporting*

*Standards, International Financial Reporting Standards and the requirement of the Companies Act, 2016 in Malaysia.*

*Further, Independent Auditor of Xinyi Solar in its Audit report 2017 has not made any adverse comments on the Value of plant and machinery appearing in audited books and accounts of Xinyi Solar (Malaysia) Sdn. Bhd.*

*Depreciation is always worked out as per applicable laws, acts and regulation and is generally not calculated as a percentage of sales. As per Xinyi Solar (Malaysia)'s Annual Report 2017 depreciation of Plant and machinery is provided on a straight-line method @ 7% - 10%.*

*The accounting policy of the company reflects that historical cost is generally based on the fair value of the consideration given in exchange of assets.”*

- v. The major raw material in the production of the PUC is ‘raw glass’ which is produced by Xinyi Solar itself. Moreover, Xinyi Solar procures a very small quantity of raw material (approximately \*\*\*-\*\*\*% of total raw material consumption) from China PR, that too is sourced from the local suppliers who don’t have export license.
- vi. The issue pertaining to interest-free loan has already been examined by the Authority in the CVD investigation concerning imports of Textured Tempered Glass whether coated or uncoated from Malaysia, which is *sub judice* before CESTAT.
- vii. Xinyi Glass (India) is not an Indian company; it is a company incorporated in Hong Kong. Just because the name of the company has the word ‘India’ in it, that does not mean that it is established in India. It is further clarified that Xinyi Glass (India) had applied to RBI to set up a liaison office in India but the said application was withdrawn and subsequently closed.

### **Examination by the Authority**

#### **1. Procurement of raw materials from related and unrelated parties majorly from China**

44. The Authority notes that Para 1 of Annexure-I states as under:

*“elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or producer under investigation, provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records reasonably reflect the cost associated with production and sale of the article under consideration.”*

45. The Authority, therefore, notes that if the records maintained by the cooperating producer/exporter reasonably reflect the cost associated with the production and sales of the product under consideration, the Authority can accept the prices reflected in such records. It is further noted that as regards the claim of the domestic industry that the raw materials are being procured by Xinyi Solar, Malaysia from their related entity in China PR, the

cooperating producer/exporter i.e., Xinyi Solar, Malaysia has submitted that it has procured raw materials like low iron dolomite, low iron limestone, and sodium sulphate from its related parties. However, these raw materials do not constitute the major proportion of cost in the production of the PUC. In view of the same, the final findings of ‘Rubber Chemical PX-13’ from China PR, Korea RP, and USA, wherein the Authority considered the market price of 4ADPA (one of the major chemicals used in the making of Rubber Chemical PX-13) instead of considering the actual import price of 4ADPA cannot be relied upon in the present investigation as 4ADPA constituted a major proportion in the cost of production of the Rubber Chemical i.e., PX-13.

## **2. Interest-free loan to Xinyi Solar Malaysia from their fellow subsidiaries.**

46. As regards the issue of adjustment in cost and normal value on account of interest-free loans, the Authority notes that the loan has been procured from the related party in Hong Kong without any interest. This was only possible because Xinyi had a related party situated in Hong Kong. Had there been no related party of Xinyi, Malaysia in Hong Kong the procurement of loan from Hong Kong would either have not been possible or if at all Xinyi, Malaysia would have been able to get the loan, the interest charged would have differed on the basis of the risk factor involved. It is further noted that even *Para 1 of Annexure-I of the AD Rules, 1995* states that the elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or producer under investigation, ***provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records reasonably reflect the cost associated with production and sale of the article under consideration.*** Therefore, the interest free loan procured by Xinyi Malaysia from its principal shareholding company based in Hong Kong is appropriately accounted for with the prevailing interest rate for working out the cost of production of the PUC for determining its normal value.

## **3. Procurement of plants and machinery by Xinyi Solar Malaysia from related entities in China PR.**

47. The domestic industry alleged that the parent company in China PR has supplied all the plant and machinery to their Malaysian subsidiary i.e., Xinyi Solar Malaysia under a related party transaction.
48. Xinyi Solar Malaysia, the cooperating producer/exporter has submitted that it has purchased the plant and machinery at market price with the approval of the Government of Malaysia.
49. It is noted that while benchmark on international prices of raw materials is available, similar credible information for spares/machinery cannot be obtained in view of technical specifications and customised requirements. Further, the Independent Auditor of Xinyi Solar Malaysia in its audit report has not made any adverse comments on the value of plant and machinery appearing in the audited books and accounts of Xinyi Solar (Malaysia). The independent auditor of M/s Xinyi Solar (Malaysia) has certified that the financial statements of the company are in accordance with the Malaysian Financial Reporting Standards, International Financial Reporting Standards and the requirements of the Companies Act, 2016 in Malaysia. It is further noted that the domestic industry has not provided any evidence to prove that the prices of input - and machinery from related parties are not at fair price.



Moreover, while analyzing the data submitted by the exporters in their questionnaire responses and the verification documents, the Authority has not found any inconsistency in the prices of the inputs from the related party. In view thereof, the concerns of the domestic industry relating to transfer pricing are adequately taken care of.

50. The same issue also arose during the original investigation wherein, the Authority with regard to the procurement of plant and machinery by Xinyi Solar Malaysia from the related entities in China PR has dealt with in detail.

#### **4. Indian office of Xinyi Solar Malaysia with the name of 'Xinyi Glass (India)'.**

51. The domestic industry in its written statement alleged that the producer/exporter Xinyi Solar Malaysia has been maintaining an Indian office with the name of Xinyi Glass (India) which is involved in the solicitation of exporter's business. In order to corroborate their claim, the domestic industry attached a screenshot of a LinkedIn profile of the 'national sales head-India' at Xinyi Glass Holdings Co. Ltd. The domestic industry further tried to buttress their claim with the screenshot of ChatGPT search results of Xinyi Glass India's operations. The Authority notes that apart from this no substantial evidence was produced by the domestic industry to sustain their claim.
52. On the other hand, the producer/exporter submitted that 'Xinyi Glass (India)' is a company incorporated in Hong Kong, and the word 'India' in its name has nothing to do with the alleged Indian office. In order to substantiate the same and establish that Xinyi Glass (India) is an entity incorporated in Hong Kong, the cooperative producer/exporter has submitted its audited annual report for the year 2022 which establishes the same.
53. It is further noted that Xinyi Glass (India) had applied to RBI to set up a liaison office in India in the year 2018, however, the said application was closed by the RBI in the year 2021 and the permission to set up an office in India was not granted. The co-operative producer/exporter in order to establish the same has furnished the e-mail received from ICICI bank wherein the request/query to open a liaison office in India has been closed. However, in the original investigation, there was no such query/e-mail document that was produced by the cooperative producer/exporter rebutting the claim/evidence produced by the domestic industry regarding the operation of its related Indian office.
54. The Authority sent questionnaires to the known producers/exporters from Malaysia, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters from Malaysia have filed exporter's questionnaire responses:
  - a. Xinyi Solar (Malaysia) Sdn. Bhd.

#### **Normal Value**

55. Based on the information furnished in the questionnaire response, the Authority notes that M/s Xinyi Solar (Malaysia) is a producer of the subject goods and has exported the subject goods to India during the POI.

56. The exporter has sold \*\*\* MT of the PUC in the domestic market during the POI whereas, it has exported \*\*\* MT of the subject goods to India through unrelated traders during the POI. The Authority has first examined whether the total domestic sales of the subject goods by the producers/exporters concerned in the subject country were representative when compared to their total sales of the subject goods in the exporting country. Thereafter, it was examined whether their sales are under the ordinary course of trade in terms of Annexure-I to the Anti-dumping Rules. M/s Xinyi Malaysia has provided transaction wise details of sales made in the home market. The same has been accepted by the Authority after examination and relied upon to determine the selling price of the subject goods sold in the home market. For the determination of the ordinary course of trade test, the cost of production of the product concerned was examined with reference to the records maintained by the producer/exporter.
57. Further, all domestic sales transactions were examined with reference to the cost of production determined by the Authority of the subject goods to determine whether the domestic sales were in the ordinary course of trade or not. In order to determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to cost of production of subject goods. In case profit-making transactions are more than 80% then the Authority considers all the transactions in the domestic market for the determination of the normal value. Where the profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value. Based on the ordinary course of trade test, all domestic sales have been taken into account for determination of normal value, since the profitable sales were more than 80% by volume. The producer has claimed inland freight, and credit cost as post factory expenses, and the same is accepted by the Authority. The normal value determined as above is mentioned in the dumping margin table below.

#### **Export prices for Xinyi Solar (Malaysia)**

58. The Authority notes that Xinyi Solar (Malaysia) Sdn. Bhd. has directly exported \*\*\* MT of the subject goods to India with an invoice value of \*\*\* USD. The producer/exporter has claimed adjustment on account of ocean freight, port and other related expenses, insurance, inland transportation, credit cost, and bank charges details of which were examined through remote cross checking/desk verification to the extent feasible. The net export price for the PUC at an ex-factory level for the producer / exporter is determined accordingly.

#### **Other producers from Malaysia**

59. As per the available data, the Authority notes that during the investigation period of the subject investigation, no other producers barring Xinyi Solar (Malaysia) Sdn. Bhd. have exported the subject goods.

### **I. Determination of dumping margin**

60. The dumping margin determined for the co-operating producer/exporter based on the normal value and the net export price (NEP) as mentioned above, is as follows:

S. No	Producer / Exporter	NV	NEP	Dumping margin		
		USD/MT	USD/MT	USD/MT	%	Range %
1	Xinyi Solar (Malaysia)	***	***	***	***	(10)-0

61. The Authority notes that during the investigation period of the subject investigation, no other producers barring Xinyi Solar (Malaysia) Sdn. Bhd. have exported the subject goods and the dumping margin for the said sole producer is negative.

**J. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK**

62. Rule 11 of the Rules read with Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "*.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*". The relevant provisions of anti-dumping agreement are reproduced below:

*Article 11*

*Duration and Review of Anti-Dumping Duties and Price Undertakings*

*11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.*

*11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.(21) Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.*

*11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.(22) The duty may remain in force pending the outcome of such a review.*

63. Article 3 of the anti-dumping agreement states as under:

*3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.*

*3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.*

*3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry.....*

*3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities.*

64. Article 3 of the anti-dumping agreement along with Rule 11 of the anti-dumping rules read with Annexure-II states that an examination of injury shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like product. In this case, the imports from the subject country have been found to be un-dumped and therefore the standards set out for carrying out the injury examination owing to such volume of dumped imports and its effect on prices of the domestic industry cannot be met. In the absence of any volume of dumped imports from the subject country the Authority does not deem it necessary to examine the injury parameters and the causal link thereto.

65. It is noted that unlike the original investigation where the Authority is required to establish current dumping, injury, and causal link between both, the examination in the sunset review investigation is that of a likelihood, which is a settled position through various judicial precedents and WTO rulings.

66. Article 11.3 of the anti-dumping agreement requires an investigating authority, in order to maintain an anti-dumping duty, to review an anti-dumping duty order that has already been established, following the pre-requisite determinations of dumping and injury- so as to determine whether that order should be continued or revoked. When the 'review' of a

determination of injury that has already been established in accordance with Article 3 of the anti-dumping agreement, Article 11.3 does not require that injury again be determined in accordance with Article 3 when making a likelihood-of-injury determination.<sup>1</sup>

67. In the fact of the present case, there is no other producer of the subject goods in the subject country barring M/s Xinyi Solar Malaysia for which the dumping margin has been found to be negative which *inter-alia* implies that the dumping margin of the subject country as a whole is negative. In the absence of current dumping from the subject country, the examination of injury would be inconsequential.
68. The Authority, therefore deems fit to directly move for the examination of likelihood factors.

**K. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY**

69. In a review investigation, the Authority has to determine whether the subject goods are continuing to enter or likely to enter the Indian market at dumped prices and whether injury to the domestic industry is likely to continue or recur due to these dumped imports if the duty is removed.

**Submissions by the domestic industry**

70. The submissions of the domestic industry with regard to likelihood of injury are reproduced herein below:
- a. The continued dumping, despite duties in force, clearly demonstrates that the dumping is only likely to continue if the duties are removed. This shows that the producers in the subject country have a tendency to resort to unfair pricing behavior.
  - b. The fact that the share of the imports from the subject country declined post imposition of duties and became much lower as compared to the imports from the rest of the world, clearly shows that anti-dumping duty is acting as a barrier against manufacturers/exporters from the subject country to dump their goods in the domestic market.
  - c. The exporters are planning significant capacity addition in Malaysia. It has been highlighted that the current capacity addition is far in excess of the local demand which indicates that the plants are likely to depend on the export markets and India in particular looking at a high growth in India. At the time when Indian industry is suffering because of dumping from Malaysia, these additional capacities will not only jeopardize the new investment but also pose threat to the existing investment and the vision of “Atmanirbhar Bharat”.

Particulars	UoM	
Capacity Expansion in Malaysia	MT	711750

<sup>1</sup> US- Sunset Review of anti-dumping Measures on OCTG from Argentina: WT/DS268/AB/R dated 29.11.2004.

Xinyi Solar – 1200 MT per day (Source: Annual Report)		
NSG – 750 per day (Source: Market Sources and Public News)		
Indian PUC Demand	MT	***
Indian PUC Production	MT	***
% of New Capacity Addition in Malaysia to Indian Demand	%	***%
% of New Capacity Addition in Malaysia to Indian Demand	Range	130-150
% of New Capacity Addition in Malaysia to Indian Production	%	***%
% of New Capacity Addition in Malaysia to Indian Production	Range	610-640

- d. Imports from China, reduced drastically from 99000 MT to 28000 MT in the year 2021-22 as compared to 2018-19. This reduction was primarily because of the existence of anti-dumping duties against China. During the same period imports from Malaysia increased from 42000 MT in 2018-19 to 128000 MT in 2021-22. In 2021, anti-subsidy duties were imposed against Malaysia. In 2021-22, with duties present against China (anti-dumping) and Malaysia (anti-subsidy), imports from Vietnam started increasing.
- e. The time since anti-dumping duties were removed against China, imports from China have increased rapidly and imports from Malaysia declined to some extent owing to anti-subsidy duties against these imports. In case the anti-dumping duties against Malaysia are not extended, imports are likely to spurt from Malaysia and the current investment will be at substantial risk of being rendered uneconomic and new investment would either be delayed or dropped.

Quantity MT	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Imports from China	65,520	99,213	76,778	29,324	28,372	209,317
Imports from Malaysia	37,929	41,789	119,968	128,273	91,949	81,937
Imports from Vietnam	-	-	-	656	78,093	103,277
Other Countries	1,077	1,430	1,272	546	23	993
Total Imports	104,526	142,432	198,017	158,799	198,436	395,524

- f. As per the market intelligence, exporters from Malaysia have significantly higher capacity than the domestic demand and with that capacity, they can swamp the Indian market. The addition of capacity in Malaysia is multiple times the Indian capacity and production. Since India is a growing market with substantial investments being made in the solar energy sector, it will always remain an attractive destination for countries with huge surplus capacities.
- g. The price sensitiveness of the Indian market makes it more vulnerable to dumped and injurious imports. In such circumstances, withdrawal of anti-dumping duty in force and

non-levy of duties against the main producers will certainly lead to continuance or recurrence of dumping and injury to the domestic industry. There is every likelihood of huge potential imports once the duties are lifted.

- h. Post imposition of the duties against Malaysia and China, Indian manufacturers have in a planned manner increased their capacities. While Borosil has increased its capacity from \*\*\* MT/day in 2018 to \*\*\* MT/day by 2023, many new manufacturers (as given below) have set up their facilities. With the given capacity expansion, the Indian industry will be able to cater to the demand in India.

<b>Particulars</b>	<b>Capacity (Per Annum in MT /day)</b>
Triveni Renewables Ltd	***
Vishakha Renewables Ltd	***
Gobind Glass Ltd	***
Emerge Glass Ltd	***
Gold Plus Glass Ltd	***
Total	***
Capacity of BRL	***
Total capacity in India	***

- i. Imports from Malaysia have declined because imports from China increased, where the parent company of Xinyi Malaysia is situated. It is interesting to note that Xinyi Malaysia has not said anything about their low imports despite the increase in demand. This is surprising because, according to their submission in response to part-II questionnaire, their exports to India ought to have increased as the demand has increased multifold. It is specifically mentioned by them that *“The global demand for PUC had been increasing and Xinyi Malaysia’s operation has been changing following the global trend.”* This approach of the exporter only shows that the lower exports from Malaysia are only because of increased exports from China. This also substantiates the point of the domestic industry that China is controlling the supply of product under consideration through Malaysia and Vietnam to avoid legitimate trade measures by the affected countries.
- j. As per the practice of the DGTR and also as per the Hon’ble Tribunal and High Court, there is no bar, if the DGTR varies the duties based on the facts and circumstances of the sunset review investigation. In view thereof, it has been requested to enhance the duties on the exporter based on the facts and circumstances of the sunset review investigation.

#### **Submissions by other interested parties**

71. The submissions of the interested parties with regard to likelihood of injury are reproduced herein below:
- That domestic industry has not substantiated their claim of likelihood and no evidence / information has been provided in support.
  - There is no likelihood of dumping and injury from Xinyi, as was the case in the original investigation.

### **Examination by the Authority**

72. The Authority has examined the likelihood of continuation or recurrence of injury considering the requirement laid down under Section 9A (5), Rule 23(1B) and parameters relating to the threat of material injury in terms of Annexure - II (vii) of the Anti-dumping rules, and other relevant factors brought on record by the interested parties.
73. The Authority observes that this being a sunset review investigation, the focus of the investigation is to examine the likely scenario of continued dumping and consequent injury if anti-dumping duties are to be allowed to expire even if there is no current dumping or injury. This also requires a consideration of whether the duty imposed is serving the intended purpose of eliminating injurious dumping.
74. All the factors brought to the notice of the Authority have been examined to determine whether there is likelihood of continuation or recurrence of dumping or injury in the event of cessation of the duty. The Authority has considered various information, as made available by the domestic industry and other interested parties, in order to evaluate the likelihood of continuation or recurrence of dumping or injury.
75. There are no specific methodologies available to conduct a likelihood analysis. However, clause (vii) of Annexure-II of the Rules *inter alia* provides factors that are required to be taken into consideration *viz.:*
- a. A significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation:**
- From the data on record and as given in the table below, the Authority notes that barring 2020-21, the imports from Malaysia have gradually declined over the injury period and the POI.
  - The imports, however, have increased from other countries esp. China post the revocation of anti-dumping duties.

Particulars	2019-20	2020-21	2021-22	POI
Malaysia	122402	144701	89679	77829
Imports from Other Countries	73202	37791	111158	323043
Total Imports (MT)	195605	182491	200837	400872

- b. Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports:**
- The Authority notes that the information submitted by the domestic industry regarding capacity expansion in Malaysia primarily relies upon the expansion by Xinyi Solar, Malaysia. The Authority further notes that the said producer has been found to be not dumping in the present as well as the previous investigation. Hence, any expansion in capacity by Xinyi Solar, Malaysia, whatsoever, is an inconsequential likelihood for dumping.



- ii. Regarding capacity addition by a new producer namely Nippon Sheet Glass Co., Ltd. (NSG), the relevant link provided by the domestic industry in its application only reveals that NSG Group will install coating capacity in the near future and will start shipping TCO glass for solar panel manufacturing after the facility is in operation and that the anticipated supply from the converted line will commence during the fourth quarter of fiscal year ending March 2024. As regards submissions of the domestic industry regarding installation of capacities by the new producer, namely, the NSG group and that it has commenced production from November 2023 are concerned, the Authority notes that since the said producer has not exported the subject goods in the investigation period, any conclusion on its likelihood to export and more so dump in the future will at best be speculative.
- iii. The WTO Panel in Pakistan – BOPP Film (UAE), has further buttressed the legal position where it was observed that:  
*"....a Member may not rely solely on assumption or speculation when conducting a likelihood analysis during a sunset proceeding but must, instead, conduct its examination on the basis of positive evidence so as to arrive at a reasoned determination, resting on a sufficient factual basis, that dumping and injury are 'likely' – i.e. probable and not merely possible – to continue or recur."*<sup>2</sup>

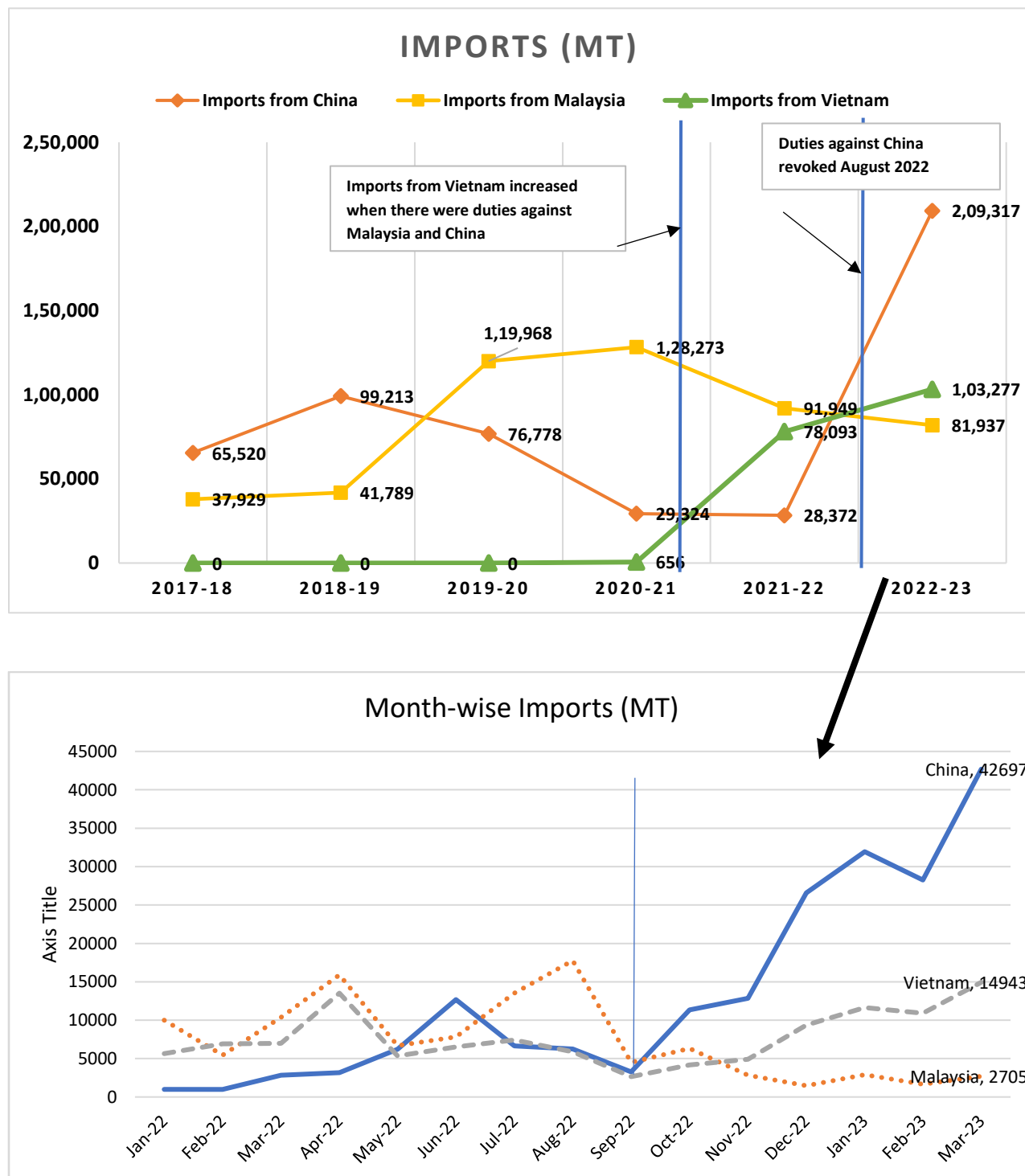
**c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices and would likely increase demand for further imports:**

- i. From the table below the Authority notes that the weighted landed value from Malaysia is consistently below the weighted average selling price and weighted average cost of the domestic industry. Similarly, the weighted average selling price is also below the weighted average cost during the entire injury investigation period.
- ii. The Authority, however, notes that the landed value from Malaysia increased throughout the injury investigation period. While the domestic industry's selling price increased from base year till 2021-22, it dipped in the POI.
- iii. The Authority duly notes that there is a price pressure on the domestic industry and it has not been able to realize its cost. However, it is equally also noted that this pressure cannot be attributed to the imports from the subject country as the same has been found to be un-dumped.

Particulars	UoM	2019-20	2020-21	2021-22	POI
Wt. Avg Cost of Sales	Rs/MT	***	***	***	***
Trend	Indexed	100	119	132	142
Wt. Avg. Selling Price	Rs/MT	***	***	***	***
Trend	Indexed	100	136	159	155
Wt. Avg Landed Price of Imports from Malaysia	Rs/MT	***	***	***	***
Trend	Indexed	100	128	129	138

<sup>2</sup> Panel Report, Pakistan – BOPP Film (UAE), para. 7.543.

76. Further, the Authority has also examined other relevant factors having a bearing on the likelihood of continuation or recurrence of dumping and consequent injury to the domestic industry. The examination is as follows.



<b>Country</b>	<b>Investigation</b>	<b>Date of duty imposition</b>	<b>Duty Expiry</b>
China	Anti-dumping duty	18th August 2017	17th August 2022
Malaysia	Anti-dumping duty	26th February 2019	25th February 2024
Malaysia	Countervailing Duty	9th March 2021	8th March 2026

77. It appears from the above graphs and the table that post-imposition of anti-dumping duties on imports of the subject goods from China PR, the volume of subject goods gradually declined from China in the year 2018-19. During the same period, the volume of subject goods from Malaysia increased. Subsequently, the Authority determined that the subject goods were being dumped from Malaysia and the Central Government upon recommendation of DGTR imposed anti-dumping against Malaysia. Later on, anti-subsidy duty was also imposed against Malaysia. A natural question that may arise here would be that despite the imposition of anti-dumping duties, the volume from Malaysia continued to increase. The same can be explained by the fact that the only participating exporter from Malaysia M/s Xinyi Solar had got nil duties. During the course of the investigation, it was also revealed that almost all the entire volume of the subject imports from Malaysia was entering into India at non-dumped prices given the fact that there was only a single producer of the subject goods in Malaysia.
78. However, post-imposition of the countervailing duties in March 2021 against the exporters/producers from Malaysia including M/s Xinyi Solar, the volume of subject goods from Malaysia declined. It is emphasized that this was the period in which trade remedial duties were in existence against the imports of both Malaysia as well as China PR. The volume of imports from China PR plummeted to their lowest level in 2021-22 in the past five years. The imports from Malaysia also registered a significant decline. However, it can be noted that in the same period, there was an abrupt and significant rise in the volume of subject imports from Vietnam. The volume of imports from Vietnam increased from 656 MT in 2020-21 to 78,093 MT in 2021-22.
79. Subsequent to this, with the revocation of anti-dumping duties against China PR and with the existence of anti-dumping duties against Malaysia, the volume of subject imports from China PR registered a meteoric rise of almost 600%, while the volume of subject imports from Malaysia has continued to decline. It appears that the subject imports from Malaysia were replaced by subject imports from China PR once the anti-dumping duties against subject imports from China PR were discontinued. According to the domestic industry, this interplay between the three countries is also closely marked by the fact that the producers/exporters in these countries are related Chinese entities and decision making is controlled by them. It is also noted that no other interested party has provided any other economic reasoning for such constant change in trade flows. The arguments on record and information available indicate towards an interplay between the three countries.
80. However, as regards the allegation of the domestic industry that in case duties against subject imports from Malaysia are not continued, imports from Malaysia will follow suit in case anti-dumping duties against China PR are imposed, the Authority notes that insofar the diversion of China's imports through Malaysia is concerned, the domestic industry's submissions appear to be speculative especially given the fact that all imports from Malaysia were found

to be un-dumped in the original investigation and are currently also entering into India at non-dumped prices. Furthermore, even after discontinuation of anti-dumping duties all subject imports from Malaysia would remain subject to countervailing duties in terms of Notification No. 3/2021 (CVD) dated 9<sup>th</sup> March 2021.

#### **d. Public interest analysis**

##### **Submissions by the domestic industry**

81. The subject good is one of the components used in the solar module which has a 40% basic customs duty, however, the subject good has zero basic customs duty. Notably, the subject goods constitute a very small portion of the cost of solar modules i.e., around 6%. Additionally, the impact of anti-dumping duty, if at all levied on the subject goods would be only around 1.50% of the module cost. Irrespective of the duties on the subject goods, the international solar module prices have undergone a change of almost 40% in the last one year, and thus, a 1.50% change is insignificant at such a level of changes in the prices of end products. In terms of the impact on the per unit cost of electricity, the impact of an anti-dumping duty on subject goods would be Rs. 0.016 per unit in the power price of minimum Rs. 6.00 per unit to the end consumer. Thus, the impact of 0.27% on module price or Rs. 0.016 per unit due to anti-dumping duty is very insignificant.

##### **Submissions by other interested parties**

82. No comments have been offered by any other interested party in this regard.

##### **Examination by the Authority**

83. The Authority duly notes that the impact of an anti-dumping duty if levied on the subject goods would only be minuscule on the end users. However, as noted above the subject country in the current investigation is not dumping the subject goods in India.

##### **Conclusion on likelihood of dumping and injury**

84. Considering the information available, and after due examination of the evidence on record, the Authority concludes as under:
- i. The entire imports from the subject country have been made by the sole producer i.e. Xinyi Solar, Malaysia in the POI as well as the preceding three years in the subject investigation. Glaringly, these imports from the said co-operative producer have been found to be not dumped.
  - ii. In the original investigation as well, the said producer was found to be not dumping.
  - iii. Since there is no dumping happening from the subject country, the likelihood of its continuation or recurrence seems to be a remote possibility.
  - iv. As far as the argument that Xinyi Solar, Malaysia has majorly expanded its capacities for the subject goods, the Authority notes that likelihood owing to any additional capacity by the said producer becomes inconsequential since it has been found not to be dumping.

- v. As regards submissions of the domestic industry regarding installation of capacities by the new producer, namely, the NSG group and that it has commenced production from November 2023 are concerned, the Authority notes that since the said producer has not exported the subject goods in the investigation period, any conclusion on its likelihood to export and more so dump in the future will at best be speculative.

## **L. POST DISCLOSURE ANALYSIS**

85. The post disclosure submissions have been received from the interested parties and are analysed as under:

### **Submissions made by the other interested parties**

86. The interested parties made the following submissions:

- i. The cooperating producer/exporter i.e., Xinyi Solar Malaysia has fully agreed to the proposals of the Authority in the disclosure statement. It has further requested the Authority to issue the final findings based on the determination of the dumping margin in respect of Xinyi Solar (Malaysia) SDN BHD, Malaysia in the disclosure statement.
- ii. With regard to the others, the cooperating producer/exporter requested the Authority to examine the normal value and export price as per the facts available.

### **Submissions of the domestic industry:**

87. The domestic industry made the following submissions:

- i. The fair valuation of plant, machinery consumables, and spare parts was not appropriately adjusted in the cost of production and hence the ordinary course of test (OCT) and normal value would not be correct and therefore cannot be said to be calculated in terms of Annexure 1 of the AD Rules.
- ii. The Authority did not call for certification from the exporter regarding the correctness of the value of plant and machinery. The domestic industry has even provided the names of the valuation agency of Malaysia. Since Xinyi Malaysia had bought machinery from China, their cost is less than the fair valuation of the machinery and accordingly, their depreciation and interest cost is not actual and reflective of true market values as envisaged in Annexure 1 of the AD Rules. The domestic industry has also provided the estimated depreciation cost based on their procurement of the machinery and has requested the Authority to check the depreciation per MT in the cost of production the exporter. It has been further highlighted that acceptance of data / information of Xinyi Malaysia is under challenge in Hon'ble CESTAT wherein the orders are reserved. The Authority should consider this aspect while making its recommendations.
- iii. The domestic industry provided evidence that Xinyi Glass India is involved in the marketing and sales of the subject goods, which the exporter did not deny. The Authority did not consider the DI's submissions regarding Xinyi Glass India's operations in India. The DI requested to deduct expenses incurred in sales, marketing,

- and remuneration paid to Xinyi Glass India while calculating their export price and landed value. Additionally, the DI requested the Authority to recommend residual duties against Xinyi for mis-declaration.
- iv. The duties on Chinese and Malaysian subject goods have positively impacted Indian producers and helped achieve Atmanirbhar Bharat. However, import prices remain below the domestic industry's costs. The imposition of anti-dumping duty allowed Indian producers to find alternative markets, with investments in Malaysia and Vietnam supporting the domestic industry's submissions.
  - v. The fact that there is only one producer in Malaysia during period of investigation, whose dumping margin may be negative, is of no legal consequence. For the purpose of likelihood analysis, it would be appropriate to consider the situation without reference to the fact that the single producer during the POI had zero dumping margin.
  - vi. The domestic industry has provided evidence of another manufacturer, NSG Solar Glass, starting production, which supports the conclusion of likelihood of dumping and injury. New investments in Malaysia have only become operational after taking subsidies and incentives. NSG Group (Nippon) commenced operations in November 2023 and has already negotiated subsidies. Revocation of duties could be detrimental to the domestic industry, other domestic producers, and upcoming capacities.
  - vii. The domestic industry predicts minimal impact of anti-dumping duties, if levied, on end consumers, with a 1% module price increase or 1.60 paisa per unit due to 25% duty.

### **Examination by the Authority**

88. The Authority notes that all of the averments made above in the form of post-disclosure comments have already been raised earlier and have been addressed appropriately at relevant paragraphs of these final findings. The interested parties may refer to such relevant paragraphs.

### **M. CONCLUSION**

89. Having regard to the contentions raised, information provided, submissions made and facts available before the Authority as recorded in these final findings and on the basis of the determination of dumping and the likelihood of continuation or recurrence of dumping and injury in the event of cessation of existing duties, the Authority concludes that:
- a. The applicant domestic producer constitutes domestic industry under Rule 2(b) of the Rules and the application filed by them satisfies the criteria of standing in terms of Rule 5(3) of the Rules.
  - b. The product under consideration continues to be exported to India at prices above the normal value resulting in no dumping from the subject country.
  - c. In the present case, the available information shows that there is no other exporters/producers of the subject goods in the subject country barring M/s Xinyi Solar Malaysia for which the dumping margin has been found to be negative which *inter-alia* implies that the dumping margin of the subject country as a whole is negative. In the original investigation as well the said sole producer was found to be exporting to India at un-dumped prices. In such an event where there is neither a

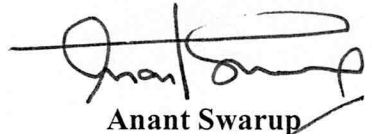
current dumping nor a likelihood of dumping, the extension of existing duties does not arise.

**N. RECOMMENDATION**

90. Having examined the contentions of various interested parties and on the basis of the above facts, circumstances and analysis, the Authority concludes that in the facts of the present case there is absence of current as well as likelihood of dumping and injury to the domestic industry. In view of the above, the Authority does not consider it appropriate to extend the existing anti-dumping duty on the imports of subject goods from the subject country. Therefore, in terms of Section 9A(5) of the Customs Tariff Act read with Rule 23 1B of the anti-dumping rules, the Designated Authority recommends not to extend the current anti-dumping duties.

**O. FURTHER PROCEDURE**

91. An appeal against this notification shall lie before the Customs, Excise and Services Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

  
Anant Swarup  
(Designated Authority)